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# The Washington Law Reporter

RICHARD A. FORD, EDITOR

Official Newspaper of Supreme Court of the District of Columbia,  
Publishing also all Decisions of the Court of Appeals  
of the District of Columbia



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## DECISIONS BY THE COURT OF APPEALS.

### Foreign Judgments—Statute of Limitations.

An important decision affecting suits on foreign judgments was made in the case of *McKay v. Bradley*. The action was on a New York judgment rendered fourteen years before suit brought, and the trial court held that there was no provision of the Code applicable to foreign judgments, and that therefore the statute of limitations applicable was that of New York, i. e., twenty years. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, reverses this ruling and holds that the former twelve-year limitation was preserved by the Code in this case, and more than this period having elapsed since the rendition of the judgment, a recovery thereon was defeated.

### Carriers; Negligence in Failure to Heat Mail Car Causing Injury to Postal Clerk.

In *Lindsey v. Pennsylvania Railroad Co. et al.*, the plaintiff sued the defendants for neglect of duty in failing to keep the cars in which he, as a postal clerk, was compelled to ride, heated, whereby he contracted a severe cold, which resulted in pneumonia. The trial court, entertaining the view that as the injury complained of was the result of a breach of the contract with the United States for the carriage of mails and route agents, the plaintiff could have no right of action therefor, directed a verdict for the defendant. The Court of Appeals, in an

opinion by Mr. Chief Justice Shepard, reverses the judgment, holding that the declaration stated an action in tort for breach of the duty which the defendant owed the plaintiff in consequence of its contract with the United States, and that the trial court erred in directing a verdict for defendant.

### Personal Injuries; Negligence; Directing Verdict.

In *Washington, etc., Railway Co. v. Chapman*, the appeal was from a judgment for the plaintiff in an action for personal injuries. It appeared that the plaintiff was a passenger on defendant's car, and as it approached a station he went to the platform for the purpose of alighting, and that the car, instead of coming to a full stop, suddenly made a violent lurch forward, throwing the plaintiff to the ground and injuring him. The defendant contended that the plaintiff was guilty of contributory negligence, but the trial court submitted the case to the jury, which found for the plaintiff. The Court of Appeals, in an opinion by Mr. Justice Duell, affirms the judgment.

### Personal Injuries; Negligence; Improper Insulation of Electric Wires.

In *Clements v. Potomac Electric Power Company*, the appeal was from a judgment for defendant in an action for personal injuries caused by coming into contact with wires of defendant which were not properly insulated. The judgment is reversed for erroneous rulings of the trial court in the matter of the admission and exclusion of evidence, and in its instructions to the jury. The opinion of the court is by Mr. Chief Justice Shepard.

### Mandamus; Expulsion from Dental Society; Order Dismissing Petition Affirmed.

In *Bryant v. District of Columbia Dental Society*, the appeal was from an order dismissing, upon demurrer to the answer, a petition for mandamus to compel the respondent to restore the petitioner to membership in the society. The Court of Appeals, in an opinion by Mr. Justice Duell, affirms the order appealed from.

### Husband and Wife; Suit for Maintenance.

In *Bernsdorff v. Bernsdorff*, the appeal was from a decree ordering the appellant to pay to his wife a certain sum monthly for her support and maintenance. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, affirms the decree. The court says, however, that if the husband shall hereafter provide a suitable home for his wife, and invite her to reside therein, her refusal will afford ample ground for discharging him from further charge of maintenance.

**Decree Confirming Auditor's Report Distributing Trust Funds Affirmed.**

In *Dangerfield v. Williams*, the appeal was from a decree of the court below confirming a report of the auditor as to the distribution of funds in the hands of trustees. It appeared that as the result of a compromise agreement in a suit brought by Cardinal Gibbons, the land in controversy had been sold, and a portion of the fund was paid over to trustees for distribution among the defendants. The appellants claimed a larger portion of the fund than was given them by the report, but their exceptions were overruled and the report confirmed. The Court of Appeals, in an opinion by Mr. Justice Duell, affirms the decree.

**Murder in the First Degree; Sufficiency of Indictment; Evidence; Judgment Reversed.**

In *Burge v. United States*, the appellant was convicted of murder in the first degree and sentenced to death. In the Court of Appeals a question was raised as to the sufficiency of the indictment, which is held sufficient in an opinion by Mr. Justice McComas. The judgment is reversed, however, for error of the trial court in permitting the prosecuting attorney in his opening statement to the jury to state facts tending to show the commission by defendant of another and different crime not charged in the indictment, and in permitting evidence of such facts to be given the jury. It is held that there was substantially no proof, nor such obvious relations between the two crimes, that it may be clearly inferred the one in any way characterized the other.

**Receiving Stolen Goods; Evidence; Attempt to Corrupt Jury.**

In *Gassenheimer v. United States*, the appellant was convicted under an indictment charging him with receiving railroad tickets alleged to have been embezzled. The case was tried three times, on the two previous trials the jury failing to agree. After the first trial the defendant asked to have the case heard before another justice, but his application was denied. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, holds that the matter rested in the discretion of the trial justice. The judgment is reversed, however, for error in admitting evidence of the possession by defendant of a number of railroad tickets other than those mentioned in the indictment and which were not proved to have been embezzled, and also in admitting evidence of an alleged attempt on the part of the defendant to reach and influence the jury corruptly.

**Perjury; Evidence Insufficient to Sustain Charge.**

In *Cook v. United States*, the defendant was convicted under an indictment charging him with perjury. The Court of Appeals, in an opinion by Mr. Justice Duell, holds that the prosecution failed to make out a case warranting its submission to the jury, and that the jury should have been directed to acquit the defendant. It therefore reverses the judgment.

**Lotteries; Sufficiency of Indictment.**

In *Knoll v. United States*, the defendant was convicted under an indictment charging him with being concerned as an agent in managing a lottery. The question presented was as to the sufficiency of the indictment; and the Court of Appeals, in an opinion by Mr. Chief Justice Shepard, holds the indictment sufficient and affirms the judgment.

**Patent Appeals Decided.**

No. 312. *Podlesak v. McInnerney*. Cause remanded for further consideration as to identity of invention. Per Duell, J.

No. 324. *Gilman v. Hinson*. Decision affirmed. Per McComas, J.

No. 318. In re Application of Thompson. Decision reversed. Per Shepard, C. J.

THE Supreme Court of the United States, in an opinion by Mr. Justice Peckham, has affirmed the decree of the Court of Appeals of this District in the case of *Speer et al. v. Colbert et al.* The case involved the construction of the will of the late Ethelbert Carroll Morgan, and the opinion below is reported in 32 Wash. Law Rep., 678.

In memory of the Franklin bicentenary the January Critic prints for the first time the inaugural address of the American ambassador to England, the Hon. Joseph H. Choate, on October 23, 1903, as president of the Birmingham and Midland Institute. Mr. Choate showed his command of the English language nowhere better than on this occasion, and the tribute there delivered by an American speaker to an English audience is especially fitted to this anniversary.

**The Blessed Gift of Tears.**

A lawyer, pleading the case of an infant plaintiff, took the child, suffused with tears, in his arms, and presented it to the jury. This had a great effect until the lawyer of the opposite side asked what made him cry.

"He pinched me," answered the little innocent.—The Law Register.

# Court of Appeals of the District of Columbia.

THE UNITED STATES, EX REL. WILLIS  
C. WEST, APPELLANT,

v.

ETHAN A. HITCHCOCK, SECRETARY OF  
THE INTERIOR.

INDIAN TRIBES; ALLOTMENT OF LAND; CONCLUSIVE-  
NESS OF DECISION OF SECRETARY OF INTERIOR;  
MANDAMUS.

1. The Secretary of the Interior has the power to determine whether a party applying therefor is entitled to an allotment of land under the agreement between the United States and the Wichita Indians of June 4, 1891, and the act of Congress ratifying that agreement. The performance of that duty is not a ministerial one, but requires the exercise of judgment and discretion, and is not reviewable by the courts, even though it may seem that his determination is erroneous.
2. Upon a petition for a writ of mandamus by a party claiming to be an adopted member of the Wichita tribe, to compel the Secretary to approve a selection of land made by him, held that the Secretary having decided that relator was not, by nativity or adoption, a member of the tribe, and for that reason not entitled to an allotment, the court was without power to pass upon the correctness of that decision.

No. 1555. Decided December 5, 1905.

APPEAL by relator from a judgment of the Supreme Court of the District of Columbia, at law, No. 44,853, dismissing a petition for a writ of mandamus. Affirmed.

Mr. S. A. Putman, Mr. W. C. Shelley, and Mr. W. H. Robeson for the appellant.

Mr. D. W. Baker for the appellee.

Mr. Justice DUELL delivered the opinion of the Court:

This is an appeal from an order of the Supreme Court of the District of Columbia, denying a writ of mandamus to require the Secretary of the Interior to approve the selection by the relator, Willis C. West, of 160 acres of land in the Wichita Reservation, in the Territory of Oklahoma, under an act of Congress of March 2, 1895. The case was heard in the court below on issue joined on a plea interposed by the relator, the appellant here, to the answer of the appellee, the Secretary of the Interior, to the petition of the relator.

It appears that on August 5, 1901, the relator, claiming to be an adopted member of the Wichita Indian tribe, filed his petition in the Supreme Court of the District of Columbia, and rule to show cause followed.

In response, a demurrer to the petition was interposed, which, by an order entered August 27, 1901, was sustained, the rule to show cause was discharged, and the petition dismissed. Upon appeal that order was reversed by this court, and the cause remanded "for further proceedings therein according to law." 30 Wash. Law Rep., 186.

The defendant below filed his answer to the petition, wherein, among other things, after reciting the duty laid upon him, as Secretary of the Interior, in the premises, he averred that, being without knowledge of relator's status at the time of his application for allotment, defendant, as such secretary, examined and considered relator's application and all the evidence and proofs presented to him to support

it, including all the matters now set forth in the petition, together with such other evidence and proofs bearing thereon as were embodied in the public records and files of the Indian Bureau and Department of the Interior, and that upon full consideration thereof the defendant, as Secretary of the Interior, did, on the 3rd day of July, 1901, reach and announce a conclusion and decision that relator was not, by nativity or adoption, a member of the Wichita and affiliated bands of Indians, and for that reason was not entitled to an allotment, and thereupon denied relator's application.

The relator filed motion for the issuance of the peremptory writ, and later a demurrer, which were successively overruled.

Relator thereafter filed his several pleas (four in number), to which defendant demurred, the demurrer being overruled as to the first plea and sustained as to the others; and on the first plea, as follows, issue was joined:

"The relator says that the defendant, as Secretary of the Interior, did not, by the decision alleged in the answer to have been made by him on July 3, 1901, decide that the relator was not by nativity or adoption a member of the Wichita or affiliated band of Indians, and for that reason deny him the said allotment."

Upon this issue the cause was tried by the court, to maintain which issue, on his part, relator offered in evidence a duly certified copy of the Secretary's said decision of July 3, 1901, and defendant, on his part, offered in evidence official exemplifications of the correspondence, decisions, regulations, etc., alleged to be the ones referred to in his answer, as well as of the decision of July 3, 1901. To all save the last mentioned of defendant's evidence relator objected, and saved his exceptions to their admission.

Upon all the evidence the court found generally for the defendant, and specially that he did reach and announce a conclusion and decision that relator was not, by nativity or adoption, a member of the Wichita and affiliated bands of Indians, therefore not entitled to an allotment, and thereupon denied relator's application for allotment, and that the defendant, as Secretary of the Interior, disapproved relator's application for membership by adoption in the Wichita Indian tribe. Relator's prayer for the issuance of the peremptory writ was denied, the rule to show cause discharged, and the petition dismissed.

At the outset it is insisted by appellant that this court on the former appeal decided that the duties of the Secretary of the Interior in this case, as shown by the petition for the writ, were purely ministerial. We do not so understand it. A demurrer having been interposed, the court held that the conceded facts were those stated in the relator's petition, and consequently it appeared that the relator had done everything required of him by the statute. Now it appears that the defendant answered, and to that answer the relator filed a plea. In the former decision this court clearly recognized that the action of the Secretary calling for the exercise of judgment could not be controlled, saying: "It was for him to determine whether the relator was within the category of persons entitled to an allotment of land,

whether the land selected was of the kind which the relator was entitled to select, whether it interfered with the rights of any other persons, and all other preliminary matters going to the validity or invalidity of the relator's action."

Furthermore, in the case of *United States, ex rel. Cox, v. Hitchcock*, 19 App. D. C., 347: 30 Wash. Law Rep., 201, which was a similar proceeding to this, this court said: "The right of approval reserved to the Secretary by the act of Congress, and which, of course, involves the right of disapproval, is not a merely ministerial duty. Plainly it requires the exercise of judgment and discretion. It requires of the Secretary to determine whether the land selected is subject to selection, and whether all the prerequisites required by the law to be performed in order to justify his approval have in fact been performed."

This rule is in harmony with the analogous case of *Riverside Oil Co. v. Hitchcock*, 190 U. S., 316, in which the court said: "Mandamus has never been regarded as the proper writ to control the judgment and discretion of an officer as to the decision of a matter which the law gave him the power and imposed upon him the duty to decide for himself."

If the Secretary of the Interior was vested with authority to decide whether the relator was entitled to an allotment under the agreement of June 4, 1891, and the statute ratifying it, then the performance of that duty was not a ministerial one, but required the exercise of judgment and discretion, and is not reviewable by the courts, even though it may seem that his determination is an erroneous one. We think there is no question but such power was vested in him. Sections 441 and 463 of the Revised Statutes give to the Secretary of the Interior management of all affairs of the Indians and all matters arising out of their relations. The power of Congress to deal with the Indians is of the most sweeping character, and it has been recognized and affirmed by the Supreme Court from the earliest days down to the present time. *Cherokee Nation v. Georgia*, 5 Peters, 1; *Choctaw Nation v. United States*, 119 U. S., 1; *Cherokee Nation v. Kansas Railway Co.*, 135 U. S., 641; *Lone Wolf v. Hitchcock*, 187 U. S., 553. In *Stevens v. Cherokee Nation*, 174 U. S., 445, the court refused to hold that Congress could not empower the Dawes Commission to determine who were entitled to citizenship in each of the tribes and make out correct rolls of citizens.

Congress having given very general powers to the Secretary of the Interior to deal with the Indians, we think that he is empowered to provide that an adoption by an Indian tribe of a person not an Indian must be approved by the Secretary of the Interior or his subordinate, the Commissioner of Indian Affairs. This is a proper regulation and one in the interest of the Indians. But in the absence of any such regulation at a time when adoption is claimed, still the power to inquire into and decide that question is given by the agreement under which allotment is claimed by the relator.

Article 4 of that agreement provides that the allotments of land are to be approved by the Secretary of the Interior. That fairly implies

that he is to determine whether the party claiming the allotment is one of the parties referred to in article 2; that is, whether he is a member of the tribe or of the affiliated bands referred to. The determination of the question is an exercise of discretion and judgment.

But it is contended by appellant that the evidence in the case "disproves the return of the secretary that he did reach and announce a conclusion and decision that the relator was not by nativity or adoption a member of the Wichita and affiliated bands of Indians, and for that reason was not entitled to an allotment under the agreement so ratified."

At the most, we can only decide whether the Secretary of the Interior did actually pass upon the question. Whether his decision was right or wrong is not for us to decide. The case was tried without a jury, and the court below made certain findings of facts, among them the following:

"(2) The court finds that the defendant did reach, and announce a conclusion and decision that the relator was not, by nativity or adoption, a member of the Wichita and affiliated bands of Indians, and for that reason was not entitled to an allotment of land as prayed, and that thereupon the defendant did deny the application of the relator for such allotment.

"(3) The court finds that the defendant, as Secretary of the Interior, disapproved the application of the relator for membership by adoption in the Wichita tribe or band of Indians."

It appears that in 1893 the regulations of the Indian Department were revised and provision made for the approval by the Indian Office of adoptions into Indian tribes, and that such provision has been continued and acted upon and recognized by the tribal authorities. It is insisted that some years before this express provision for approval was in force, the relator was adopted as a member of the Wichita tribe, and that no retroactive effect can be given to the provision. However this may be, we believe that it was within the power of Congress to give to the Secretary of the Interior authority to determine who were entitled to citizenship in the Wichita tribe, and the agreement of June 4, 1891, provides for the determination of that question by the Secretary of the Interior when it provides, as it does, that the allotments of land shall be approved by him, and, as before stated, we so held when this case was here on petition and demurrer.

The power is a salutary one and in the interest of the Indians as well as of the Government. This, however, is a phase of the question that we need not enlarge upon, for we have no more to do with the wisdom of the regulation and of Congressional action than we have with the question whether the Secretary arrived at a correct decision in any given case.

That the relator was adopted on different occasions by the tribal authorities, and adoption refused on at least one occasion, we may concede, for the question is not that, but rather whether the adoption was ever approved by the Indian Office, or whether anything precluded the Interior Department from determining the question after the agreement of June 4, 1891, was approved by Congress on March 2, 1895. We think

that the question was an open one, and that the Secretary of the Interior was free to examine the question as to right of the relator to an allotment of land, and that it was his duty so to do. When the Secretary of the Interior was called upon in 1901 to consider the right of the relator to an allotment of land it was permissible for him to examine the records of the Department of the Interior to aid him in determining the question. The records disclosed that the question of the adoption of the relator into the Wichita tribe had been passed upon by his predecessor in February, 1898. That action approved a recommendation of the Commissioner of Indian Affairs, bearing date June 7, 1895, which showed that the council of the Wichita and affiliated tribes had refused to adopt the relator. By his decision of July 3, 1901, it appears that on May 21, 1901, the council had voted in favor of the relator's adoption. It would seem that these various and conflicting tribal actions were such as would require the Secretary of the Interior, in determining whether the relator was entitled to an allotment of land, to exercise judgment, and that it was not a mere ministerial duty that he was called upon to perform. The conclusion of the Secretary was that "the application of Willis O. West for enrollment by adoption with the Wichita tribe is denied." We think this amounted to a decision that the relator was not by nativity or adoption a member of the Wichita or affiliated band of Indians, and for that reason not entitled to an allotment of land.

To approve or disapprove any alleged adoption of the relator by the Wichitas was a right vested in the Secretary of the Interior, and without his approval the relator could not become a member of the tribe. Not being a member of the tribe by nativity or adoption, he was not entitled to any allotment of land, and the Secretary of the Interior in refusing to approve an allotment was exercising a duty calling for the exercise of judgment. It follows that the answer of the Secretary was sufficient and not open to demurrer, which was therefore properly overruled. The answer and plea raised an issue which was correctly decided by the trial court, and the objection taken to the admission of the evidence offered on behalf of the defendant was properly overruled.

Finding no reversible error in the proceedings in the lower court, we shall affirm its judgment with costs. And it is so ordered.

**Master and Servant—Injuries to Servant.**—In an action for injuries to a servant by the bursting of a belt, plaintiff held not guilty of contributory negligence as a matter of law in remaining at work, relying on the promise of his foreman to furnish a new belt. *Maryland Steel Co. v. Engleman, Md., 61 Atl. Rep. 314.*

**Principal and Surety—Discharge of Surety.**—Where a new agreement between a debtor and creditor is that the debtor shall pay, at the end of a period agreed on for an extension, precisely the same sum due at the time the agreement was entered into, the surety is nevertheless released. *De Barrera v. Frost, Tex., 88 S. W. Rep. 476.*

## Court of Appeals of the District of Columbia.

ANTONIO MALNATI ET AL., APPELLANTS,

v.

NOBLE H. THOMAS.

EXECUTION; WRONGFUL LEVY; DAMAGES; PLEADING; ALLEGATION OF DAMAGES.

In an action for damages for an alleged wrongful levy of a *f. fa.* upon certain bricks the property of plaintiff, the declaration alleged that the bricks were the property of plaintiff and in his possession for use in erecting a building for the United States and which he was bound by contract under penalty to complete within a specified time; that the bricks were sold under the *f. fa.* and the proceeds applied in satisfaction of the judgment, "whereby plaintiff was greatly delayed and hindered in performing said contract," to his damage \$2,000, etc. *Held*, that the one wrongful act of carrying away and selling plaintiff's bricks about to be used in erecting a building implied damages to the plaintiff to the extent of the value of the bricks and also to the extent of the delay and hindrance in completing the building; that both elements of damage were general damages which the law implies, and both were recoverable under the allegations of the declaration; and that an instruction to the effect that, under the declaration, the plaintiff was not entitled to recover the value of the bricks, but only damages for the delay, was properly denied.

No. 1588. Decided December 5, 1905.

**APPEAL** by defendants from a judgment of the Supreme Court of the District of Columbia, at law, No. 44,610, entered upon the verdict of a jury in an action for the wrongful levy of a writ of *fi. fa.* *Affirmed.*

*Mr. Henry E. Davis* and *Mr. E. B. Kimball* for the appellants.

*Mr. A. A. Lipscomb* for the appellee.

*Mr. Justice McCOMAS* delivered the opinion of the Court:

This was a suit for damages brought by the appellee against the appellants, Malnati and Palmer, the latter the United States Marshal for the District of Columbia, for an alleged unlawful levy under a *fi. fa.* upon a judgment obtained by Malnati against one Spier and one Jones, upon certain bricks, the property of the appellee, which bricks were sold by the marshal and the proceeds applied to payment of Malnati's judgment.

Upon the trial the verdict was for the appellee, and from the judgment thereon the defendants below appealed. The assignment of error raises the question whether under the declaration the appellee was entitled to recover for the value of the bricks so seized and sold.

The single count of the declaration alleges that the appellant, Malnati, procured the *fi. fa.* upon his judgment against Spier and Jones, and directed Marshal Palmer, appellant, to levy upon forty thousand bricks, the property of the appellee, Malnati averring the same to be the property of Jones, "which bricks were then and there the property of the plaintiff and in the plaintiff's possession in the District of Columbia, where the plaintiff was about to use them in constructing a building for the Government of the United States, which the plaintiff was bound by contract, under penalty, to complete within a limited time; and caused the said bricks to be sold at public auction, and the proceeds of said sale to be applied to the

payment of the judgment and cost in the aforesaid action, *whereby the plaintiff was greatly delayed and hindered in performing said contract* to the damage of the plaintiff two thousand dollars; wherefor the plaintiff claims two thousand dollars, beside costs."

The cause proceeded to trial upon the general issue, and the appellee was allowed over the appellant's objection to prove the value of the bricks taken and sold by the marshal, and evidence was admitted tending to show that the appellee's work of constructing the building had been hindered and delayed four days by such taking of the bricks at a loss to the appellee. The appellants introduced no evidence except to show that the levy on the bricks was made in the belief that the bricks were the property of Jones. The verdict was for the appellee.

During the trial the court below refused the following prayer of the appellants:

"That if the jury should find for the plaintiff (the appellee) the jury should not in its verdict include damages for the value of the bricks mentioned in the declaration, or any part thereof, for the reason that the declaration contains no claim for damages on account of the value of said bricks."

On behalf of the appellant it is insisted that the plaintiff having the right to claim damages generally, or to specify the account on which, and the extent to which, damages are claimed, the plaintiff must be held to the terms of his pleading, and that in this case, as the attention of the court below was specifically asked by the prayer rejected to the limited claim for damages in the declaration, it was error for the court to allow damages beyond such claim.

In *Freeland v. Brooklyn Heights Railroad Company*, 54 N. Y. App. Div., 90, the case mainly relied on by the appellants, the action grew out of a collision between one of the cars of the Brooklyn Railway Company and a wagon, in which Freeland, the plaintiff, was driving, which resulted in the destruction of the horse and wagon, and inflicted severe personal injury upon the plaintiff. The complaint mentioned the killing of the horse and the demolition of the wagon, but contained no allegation that the plaintiff suffered any loss by reason thereof. The only averment of damages related to the personal injuries which the plaintiff himself sustained. Evidence of the value of the horse and wagon was admitted, however. The court held "that this evidence was not admissible under the complaint," saying, "there was no allegation that the plaintiff had suffered any loss by reason of the destruction of the horse and wagon, nor did the complaint demand damage should be awarded on that account."

We observe that Woodward, J., dissenting, asserts the sufficiency of the complaint, "as a demand for all of the damages growing out of the one wrongful act of the defendant." We incline to the latter view.

In the case before us the appellee sufficiently alleges in this declaration that the bricks of the appellee were carried away and sold by the appellant, Palmer, and alleges the value thereof, but it is urged that the appellee limited his claim of damages to the delay and hindrance in constructing the building caused by such alleged

wrong, and the court below should have so limited the evidence and the recovery. The appellee's declaration was intended to be a count in trespass *de bonis asportatis*. It lacks characteristic features of such a count, but it is a sufficient statement of the cause of action under our system of pleading, and therefore a verdict and judgment in a clear case of a wrongful sale by the appellants of the appellee's property, to satisfy the debt of a stranger, ought not to be set aside and reversed because of some confusion in the mind of the pleader respecting the law of damages unless the error be serious.

"Damages," says Chitty, "are either general or special. General damages are such as the law implies or presumes to have accrued from the wrong complained of. Special damages are such as really took place and are not implied by law. . . . It does not appear necessary to state the formal description of damages in the declaration, because *presumptions* of law are not in general to be pleaded and averred as facts." 1 Chitty's Pleading, star pages 395-6.

The charge of general damage is sufficiently notified in the statement of the injury, which imports all of its necessary and immediate effects. Therefore, general damage requires no particular mention, and is covered by the general claim at the conclusion. Bullen and Leake Prec. (3d ed.), 12, 13.

The declaration we are considering sufficiently alleges that the appellants levied upon and carried away and sold the appellee's bricks, and applied the proceeds of sale to pay a judgment against a third person, "to the damage of the plaintiff two thousand dollars, wherefor the plaintiff claims two thousand dollars."

Of course, this general claim of damage is sufficient to sustain the verdict and the judgment. The appellants insist, however, that the clause of the declaration preceding the words last quoted, namely, "whereby the plaintiff was greatly delayed and hindered in performing said contract," excludes all claim for the natural and necessary damage which, without any averment, the law implies from carrying away and selling the appellee's property for another's debt, and that this claim of damage confines and limits the appellee to evidence of, and recovery for, the only damage averred in his declaration, namely, the delay and hindrance in performing his contract.

In our opinion, the taking away from the site of the building which the appellee was then and there engaged in erecting pursuant to a contract, under penalty to complete it within a limited time, necessarily and directly delayed and hindered the appellee in performing said contract, and such delay and hindrance, by taking away the bricks wherewith the appellee was then about to build the house, was the direct and necessary consequence of the trespass, and as such, a part of the general damage which the law presumes to have accrued to the appellee from the wrong complained of in his declaration, and therefore no claim whatever for this element of damage was necessary. It is superfluous to claim what the law implies, and this clause in this declaration is to be rejected as surplusage.

The one wrongful act of carrying away and

selling the appellee's bricks about to be used in constructing a building implied damage to the appellee to the extent of the value of the bricks and also to the extent of the delay and hindrance to the completion of the building according to the contract, which were the direct and necessary consequences of the one wrongful act complained of. Both elements of damage were elements of general damage which the law implies.

If we assume that acts complained of in this declaration were not in themselves necessarily injurious to the appellee, but became so only by reason of the special damages caused to him by such wrongful acts, even then the allegation whereby "the plaintiff was greatly delayed and hindered in performing said contract," taken in connection with the inducement in the declaration, lacks sufficient particularity to make it a claim for special damages.

"When," says Chitty, "the law does not necessarily imply that the plaintiff sustained damage by the act complained of, it is essential to the validity of the declaration that the resulting damage should be shown with particularity." 1 Chitty's Pl. star page 396; Bullen & Leake, Prec. (3d. Ed.), 12, 13; Sedgwick on Damages, Sec. 1265; Squier v. Gould, 14th Wendell, 166.

Since there is no sufficient claim of special damage, this declaration claims only the general damage, which was the direct and necessary consequence of the wrong complained of in the declaration. Therefore, the learned court below committed no error in admitting evidence of the value of the bricks levied upon and sold, nor in rejecting the appellant's second prayer, which instructed the jury not to give damages for the value of the bricks mentioned in the declaration.

The judgment appealed from must be affirmed, and it is so ordered.

Affirmed.

#### Assignments of Justices of the Peace.

The justices of the Supreme Court of the District, in general term, have issued the following order:

The court, having been informed of the reappointment of the following justices of the peace for the District of Columbia: Charles S. Bundy, Samuel O. Mills, Lewis I. O'Neal, Luke O. Strider, Thomas H. Callan, and Robert H. Terrell, it is ordered that the following assignments of said justices are hereby made, to take effect on and after January 1, 1906, in lieu of the assignments and subdistricts now existing, viz.:

Subdistrict No. 1, Charles S. Bundy.—The said subdistrict to include the boundaries and limitations of the present subdistrict No. 1, assigned to the said Justice Charles S. Bundy, his office to be located as heretofore designated, in the Columbian Building.

Subdistrict No. 2, Samuel O. Mills.—The said subdistrict to include the boundaries and limitations of the present subdistrict No. 2, assigned to the said Justice Samuel O. Mills, his office to be located as heretofore designated, to wit, 1206 G street northwest.

Subdistrict No. 3, Thomas H. Callan.—The

said subdistrict to include the boundaries and limitations of the present subdistricts Nos. 3 and 9, formerly assigned to Justices Thomas H. Callan and Samuel R. Church, Justice Callan's office to be located as heretofore designated, to wit, 627 F street northwest.

Subdistrict No. 4, Luke O. Strider.—The said subdistrict to include the boundaries and limitations of the present subdistricts Nos. 4 and 10, formerly assigned to Justices Luke O. Strider and Emanuel H. Hewlett, Justice Strider's office to be located as heretofore designated, to wit, Fendall Building.

Subdistrict No. 5, Lewis I. O'Neal.—The said subdistrict to include the boundaries and limitations of the present subdistricts Nos. 5 and 6, formerly assigned to Justices Lewis I. O'Neal and H. Randall Webb, Justice O'Neal's office to be located as heretofore designated, to wit, 456 D street northwest.

Subdistrict No. 6, Robert H. Terrell.—The said subdistrict to include the boundaries and limitations of the present subdivision No. 8, formerly assigned to Justice Robert H. Terrell, the office of the justice to be located as heretofore designated, to wit, 911 C street northwest.

#### Bill of Lading—Entries—Carrier.

The Supreme Court of Minnesota held, in the case of *The Swedish-American National Bank of Minneapolis v. Chicago, Burlington & Quincy Railroad Company*, that the question whether record entries relevant to the issue, made in the regular course of business, were properly verified as a basis for receiving them in evidence was a question for the exercise of practical sense and sound discretion by the trial judge, and that his decision of it would not be reversed on appeal if there was any reasonable evidence supporting it. The court further held that a carrier, even as to an innocent indorsee, was not estopped by statements in a bill of lading issued by his agents from showing that no goods were in fact received for transportation, unless by his usual mode of doing business he had given to his agents authority to issue bills of lading for goods not received.

#### Partnership—Dissolution—Notice.

The Supreme Court of Michigan held, in the case of *The Smith & Cheney Company v. Schmidt*, that where goods are ordered by one of the members of a copartnership and shipped after the dissolution of the firm, the retiring partner is bound, unless the vendor has notice of the dissolution or knowledge of such facts as will put him upon inquiry. The court said: "One of the partners had a right to give the order and bind the partnership; whether the other partner knew it or not is immaterial. Having given the order when they were partners, it is no defense that in the absence of notice of dissolution the goods were shipped after the partners had dissolved and defendant Schmidt had retired. No notice of the dissolution was given to the plaintiff. Actual notice or knowledge of the facts sufficient to put plaintiff on inquiry was necessary. The giving and taking of the order when the defendants were partners constituted a dealing with the firm which entitled plaintiff to actual notice."



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## BOARD ELECTION NOTICE.

The annual stockholders' meeting of the Law Reporter Company of Washington City will be held at the office of the company, 518 Fifth St. N. W., on Monday, January 8, 1906, for the purpose of electing nine directors to serve for the ensuing year. Polls open from 12 M. to 1 P. M. 1892  
H. RANDALL WEBB, Secretary.

## RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

## Legal Notices.

### FIRST INSERTION.

S. S. Yoder, Attorney  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.  
In Re Estate of Nancy D. Bishop, Deceased.  
No. 10,732.

Upon consideration of the report of Samuel S. Yoder, executor under the will of Nancy D. Bishop, reporting that he has received an offer from Sophia A. Bishop, a legatee under said will, agreeing to accept the sum of \$3,000.00, in lieu of the annual legacy of \$600.00 to her, during her natural life, payable in monthly instalments, as provided in said will and as a full release and discharge of said legacy, it is, this 2d day of January, 1906, ordered that a rule be issued on all the parties in interest, to show cause on or before the 27th day of January, 1906, why the prayer of the petition should not be granted. Provided that a copy of this order be published once a week for three successive weeks in The Washington Law Reporter before said last mentioned date, and that a copy of said order be mailed to the postoffice address of all the parties mentioned [Seal] in said will and in the petition for probate thereof. WENDELL P. STAFFORD, Justice.  
A true copy. Attest: James Tanner, Register of Wills. 1-3t

Alex. H. Bell, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of John G. Barthel, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3d day of January, 1906. KATHARINE G. BARTHEL, 221 John Marshall Place. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,343. Administration. [Seal.] 1-3t

## Legal Notices.

Jos. H. Stewart, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Rose Simms, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 29th day of December, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of January, 1906. JOSEPH H. STEWART, 809 F. St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,343. Administration. [Seal.] 1-3t

Chas. W. Darr, Richard A. Curtin, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of William Santry (also known as William Sautry), late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 29th day of December, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of January, 1906. CHARLES W. DARR, 707 G. St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,273. Administration. [Seal.] 1-3t

Jas. W. Beller and Geo. H. Thomas, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Elphonzo Youngs, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of December, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of January, 1906. AMELIA L. YOUNGS, 1800 10th St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,350. Administration. [Seal.] 1-3t

Wolf & Rosenberg, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William Henry Harrison, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 2d day of January, 1906. LUCY A. HARRISON, 1209 R. St. N. W., MAURICE D. ROSENBERG, Jenifer Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,356. Administration. [Seal.] 1-3t

Barnard & Johnson, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Emma Stahl, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 3d day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 3d day of January, 1906. GUY H. JOHNSON, Columbian Bldg.; JOHN SCRIVENER, 319 4 1/2 St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,332. Administration. [Seal.] 1-3t



**Legal Notices.****W. C. Martin, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Robert H. Daggs, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of December, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of December, 1905. WM. J. HOWARD, 100 Mass. ave. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,285. Administration. [Seal.] 1-St

**Fred McKee, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Annie K. McKee, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of January, 1906. JAMES W. MCKEE, 1818 North Capitol st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,363. Administration. [Seal.] 1-St

**Michael J. Keane, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Cornelius H. Naughton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of January, 1906. MARY A. NAUGHTON, 1926 14th st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,355. Administration. [Seal.] 1-St

**F. Elwood Pratt and Jesse H. Wilson, Jr., Solicitors****In the Supreme Court of the District of Columbia,  
Holding an Equity Court.  
Patrick Fealy v. Anna Dore et al.**

Eq., No. 25,509.

Upon consideration of the report filed herein by F. Elwood Pratt, trustee, showing that he has sold, at public auction, sub-lot 33, in square 335, to Jane E. Murphy, for the sum of \$2,750, it is this 29th day of December, 1905, ordered by the court that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 29th day of January, 1906. Provided that this order be published once a week for three successive weeks in The Washington Law Reporter before said last mentioned date. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 1-St

**W. J. Lambert, Solicitor****In the Supreme Court of the District of Columbia,  
Holding a Special Term for Equity Business.  
N. Nora Hyman v. John B. Hyman et al.**

Equity 25,297.

Upon consideration of the report of Wilton J. Lambert and William C. Martin, trustees, filed herein, it is, this 2d day of January, A. D. 1906, ordered that said trustees be, and they hereby are, authorized to accept the offer of Terrence J. McMahon to purchase for the sum of \$1,675 the west one-half of lot No. 55, in square 2,9, in the city of Washington, District of Columbia, being the property decreed to be sold in the above-entitled cause; and, further, that said sale of said lot be ratified and confirmed as reported, unless cause to the contrary be shown on or before the 5th day of February, A. D. 1906. Provided a copy of this order be published in The Washington Law Reporter and The Washington Times once a week for three successive weeks before said

[Seal] day. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. 1-St

**Legal Notices.****Charles J. Murphy, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.  
Estate of Mary Sullivan, Deceased.  
No. 13,335. Administration.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Edwin H. Pillsbury, it is ordered this 29th day of December, A. D. 1905, that notice be and hereby is given to Michael Sullivan, Patrick Sullivan, and Eugene Sullivan, and to all others concerned, to appear in said court on Monday, the 5th day of February, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington

[Seal] Post once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day. JOB BARNARD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 1-St

**Jos. H. Stewart, Solicitor****In the Supreme Court of the District of Columbia.  
John H. Burke, Complainant, v. The Unknown Heirs  
at Law of Emanuel Garner and Mary Nix, Defendants. Equity No. 25,778.**

The object of this suit is to establish of record the title of complainant in fee simple by adverse possession against the unknown heirs at law of Emanuel Garner and Mary Nix, their alienees and devisees, to that parcel of land described as the east one-half of lot seven in block twenty-one in Howard University subdivision of the farm of the late John A. Smith, known as Effingham Place, in the county of Washington, as the same appears of record in the office of the surveyor of the District of Columbia, in liber District 1, folio 76%, and, it appearing to the court, upon good cause shown by affidavit filed herein, that the publication herein provided for will be sufficient, it is, on motion of the complainant, by his solicitor, Joseph H. Stewart, this 2d day of January, 1906, ordered that the defendants, the unknown heirs at law of Emanuel Garner and Mary Nix, their alienees and devisees, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that this order be published in The Washington Law

[Seal] Reporter and The Record, once a week for three consecutive weeks. By the Court: THOS. H. ANDERSON, Associate Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. 1-St

**Paul E. Johnson, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Daniel Murphy, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of January, 1906. CECILIA V. MURPHY, 10 I st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,371. Administration. [Seal.] 1-St

**Henry S. Matthews, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of John Leetch, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 2d day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 2d day of January, 1906. WILLIAM A. LEETCH, 1897 31st st. N. W.; FRANK P. LEETCH, 1698 31st st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,366. Administration. [Seal.] 1-St

**Legal Notices.****L. Cabell Williamson, Solicitor**

In the Supreme Court of the District of Columbia.  
**L. Cabell Williamson, Mary E. Fitch, Trustees, Complainants, v. the Unknown Heirs, Alienees, or Devisees of John Davis, Henry Buford, and John H. Eaton, Defendants.** Equity No. 26,681.

The object of this suit is to perfect complainants' title to lot numbered and lettered "A" in J. B. Hollidge's subdivision of lots, in square numbered five hundred ten (510) in the city of Washington, District of Columbia, as said subdivision is of record in Book C. H. B., page 145, of the records of the office of the surveyor of said District. On motion of the complainants, it is, this 4th day of January, A. D. 1906, ordered that the defendants, the unknown heirs, alienees, or devisees of each of the following named persons, to wit: John Davis, Henry Buford, and John H. Eaton, cause their appearance to be entered herein, on or before the first rule day occurring after three months from the day of the first publication of this order; otherwise the cause will be proceeded with as in cases of default. Provided a copy of this order be published for three months, once a week for three successive weeks for the first month and twice a month for each of the two succeeding months, in The

[Seal] Washington Law Reporter and Washington Post. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. Jan 5-12-19; feb 2-9; mar 2-9

**SECOND INSERTION.****Lester and Price, Attorneys**

**Supreme Court of the District of Columbia, Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Patrick McCormick, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of December, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of December, 1905. JOHN B. GEIER, 1113 7th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,253. Administration. [Seal.] 52-St

**Wilton J. Lambert, Attorney**

In the Supreme Court of the District of Columbia, Holding a Probate Court.  
**In the Matter of the Estate of Margret Love Skerrett, Deceased.** Administration, No. 13,837.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for the probate of the last will and testament of said deceased, and for letters testamentary on said estate, by David Milne and Frederick William Matteson, the executors named in said will, it is, this 27th day of December, 1905, ordered that notice be and the same hereby is given to Robert G. Skerrett, and all others concerned, to appear in said court on the 30th day of January, 1906, at 10 o'clock A. M., to show cause why said application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each week for three consecutive weeks before the return day herein mentioned, the first publication to be not less

[Seal] than thirty (30) days before said return day. By the Court: THOS. H. ANDERSON, Justice. A true copy. Attest: James Tanner, Register of Wills. 52-St

**George F. Collins, Attorney**

**Supreme Court of the District of Columbia, Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Elizabeth A. Rawlings, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of December, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of December, 1905. JAMES S. RAWLINGS, 1207 T st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,019. Admin. [Seal.] 52-St

**Legal Notices.**

**Walter C. Clephane, Attorney**  
**Supreme Court of the District of Columbia, Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Henry O. Towles, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of December, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of December, 1905. FANNIE E. TOWLES, 1124 12th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,343. Administration. [Seal.] 52-St

**THIRD INSERTION.**

**Worthington, Heald & Frailey, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Albert F. Fox, Executor and Trustee, v. Sophia C. Pitcholyn et al.** No. 23,861. Equity.

This cause being referred to me to report distribution of the fund, I shall proceed with the said reference on Wednesday, the 10th day of January, 1906, at 10 o'clock A. M., at the auditor's rooms in the United States Court House in this city. All persons having claims against Caroline M. Pitcholyn, deceased, or her estate, are notified to present the same, with the proofs, at the said time and place. JAS. G. PAYNE, Auditor. 51-St

**Geo. C. Gertman, Attorney**

**Supreme Court of the District of Columbia, Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Mary E. Bryan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of December, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of December, 1905. SOPHIA L. KLEINDIENST, 812 23d st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,338. Adm. [Seal.] 51-St

**J. A. Sweeney, Attorney**

**Supreme Court of the District of Columbia, Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of Hugh Hurney, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 14th day of December, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of December, 1905. MARY A. HURNEY, 980 25th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,223. Admn. [Seal.] 51-St

**W. M. Ellison, Attorney**

**Supreme Court of the District of Columbia, Holding a Probate Court.**

**Estate of Benjamin F. Kincannon, Deceased.**  
 No. 13,330. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters of administration on said estate, by Mattie A. Kincannon, it is ordered this 20th day of December, A. D. 1905, that notice be and hereby is given to Thomas Redden, and to all others concerned, to appear in said court on Thursday, the 25th day of January, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 51-St

**Legal Notices****Robert F. Shealey, Attorney****Supreme Court of the District of Columbia,****Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of Thomas Montgomery, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 18th day of December, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of December, 1905. MARGARET M. MONTGOMERY, 401 st. N. E. Attest: M. J. GRIF-FITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,230. Administration. [Seal.] 51-3t

**Douglas & Douglas, Solicitors****In the Supreme Court of the District of Columbia.**

**William H. Hoeke, Complainant, v. Sidney F. Marshall et al., Defendant.**  
Equity No. 23,465.

Sydney F. Marshall and Charles A. Douglas, trustees, having reported to the court the sale of all the right, title, and interest of Milletus J. Wine, deceased, subject to all incumbrances, in the following described real estate, situated in the District of Columbia, to wit: All of block X; all of block 1; lots 2 to 13, both inclusive, in block 3; lots 16, and 19 to 27, both inclusive, in block 5; lot 17, in block 7; all of blocks 9, 11, 15, 17, and 18; lots 15, and 25 to 30, both inclusive, in block 19; all of block 20; lots 1, 2, 5 to 19, both inclusive, and 22 to 30, both inclusive, in block 21; all of blocks 22, 23, and 24; lots 1 to 37, both inclusive, and that part of lot 33, lying in the District of Columbia, in block 25; all of blocks 26, 27, 28, and 29; lots 1 to 16, both inclusive, 20 to 33, both inclusive, and those parts of lots 17, 18, 34, 35, and 36, lying in the District of Columbia, in block 30; all of blocks 31, 32, and 33; lots 1 to 11, both inclusive, and 20 to 29, both inclusive, and those parts of lots 12, 13, 14, 30, and 31, lying in the District of Columbia, in block 35; all of blocks 36, 37, 38, and 39; lots 1 to 7, both inclusive, and 20 to 21, both inclusive, and those parts of lots 8, 9, 25, 26, and 27, lying in the District of Columbia, in block 40; all of blocks 41, 42, and 43; lots 1, 2, and 20, and those parts of lots 3, 4, 5, 21, and 22, lying in the District of Columbia, in block 44; all of blocks 45 and 46; lots 1 to 14, both inclusive; 16 to 27, both inclusive, and those parts of lots 15, 28, 29, and 30, lying in the District of Columbia, in block 47; and all of blocks 49, 50, and 51—all in Charles A. McEuen's subdivision known as "Marshall," as said subdivision is recorded in the office of the surveyor for the District of Columbia, in county book No. 6, at page 39—to John P. F. White for the sum of one thousand two hundred dollars (\$1,200), it is, by the court, this 16th day of December, 1905, adjudged, ordered, and decreed that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 16th day of January, 1906. Provided a copy of this order be published once a week for three successive weeks before said last-mentioned date in The Washington Law Reporter. THOS. H. ANDERSON, Associate Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. 51-3t

**Lester & Price, Solicitors****In the Supreme Court of the District of Columbia.****John A. Ruppert et al. v. Rosa Sauter et al.****In Equity, No. 25,308.****DISTRICT OF COLUMBIA, ss:**

The object of this suit is to obtain a judicial construction or interpretation of the last will and testament of Agnes M. Beuchert, deceased. On motion of complainants, it is, this 12th day of December, A. D. 1905, ordered that the defendants, Daisy Sauter, Eva Singleton, Joseph Wirth, and Antonio Rohrman, cause their appearance to be entered herein, on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in the case of default. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 51-3t

The Law Reporter Printing Company's office is now the cleanest, most comfortable and best conducted one in the city of Washington, having a head for every department of the business. It will be kept so, in order that the public may be expeditiously served.

**Legal Notices.****John S. Alleman, Attorney****Supreme Court of the District of Columbia,****Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Elizabeth C. Oppermann, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 21st day of December, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of December, 1905. ALBERT F. FOX, 911 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,221. Administration. [Seal.] 51-3t

**John Lewis Smith and James B. Archer, Solicitors**  
**In the Supreme Court of the District of Columbia.**

**Gertrude J. Parkinson v. Robert M. Parkinson.****No. 25,670, Equity Docket, No. —.**

The object of this suit is to obtain a divorce from the defendant from bed and board upon the ground of desertion and non-support. Provided a copy hereof be published once a week for three successive weeks in The Washington Law Reporter and Washington Post. On motion of the complainant, it is, this 12th day of December, A. D. 1905, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in the case of default. By the Court. THOS. H. ANDERSON, Justice. True copy. Test: John R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. 51-3t

**Lancaster & Smith, Attorneys****Supreme Court of the District of Columbia,****Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of William Edward Frazier, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 21st day of December, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of December, 1905. LAURA C. FRAZIER, 709 10th st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,256. Administration. [Seal.] 51-3t

**Geo. C. Gertman, Attorney****Supreme Court of the District of Columbia,****Holding a Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Robert I. Nevitt, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 8th day of January, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 20th day of December, 1905. ANNIE A. NEVITT, by Geo. C. Gertman, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,522. Administration. [Seal.] 51-3t

**FOURTH INSERTION.****J. J. Darlington, Solicitor****In the Supreme Court of the District of Columbia.**

**Alexander B. Hagner et al. v. John H. Walter, Trustee, et al. No. 25,589, Eq. Doc. 57.**

**ORDER.**

The object of this suit is to perfect complainants' title to part of lot 13, square 141, beginning for same at the northeast corner of said lot 13, running thence south 133 feet, thence west 25 feet 3 1/4 inches, thence north 133 feet, thence east 25 feet 3 1/4 inches, to the place of beginning. On motion of complainants, it is, this 29th day of November, A. D. 1905, ordered that the defendants James Westcott, Augustus Westcott, Ann Eliza Barnard, and William Cary McHenry, John McHenry, Ellen Keyser, and

## Legal Notices.

**Sophia Stewart, trustees, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs, devisees, and allenees of each of the following named persons, to wit: Julius Forrest, trustee, John Brown, John Innes Clark, — Brown, — Ives (late partners trading as Brown and Ives), George Gibbs, Walter Channing (late partners trading as Gibbs and Channing), Samuel Elam, William Cook, James McHenry, John McHenry, Anna Boyd, Ramsey McHenry, Robert Oliver, William Hindman, James Hindman, James Stott, Sallie Stott, Samuel Stott, Charles Stott, Lucy Stott, Mary Stott, Elizabeth Stott, James Stott, junior, and Sarah Westcott, cause their appearance to be entered herein on or before the rule day occurring after three months from the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks during the month following the first publication of this order, and twice a month during the ensuing month, and in The Washington Post twice a month for two months, good cause therefor having been shown.**

[Seal] **WENDELL F. STAFFORD, Justice.** True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. dec 1, 8, 15; Jan 5, 12

## FIFTH INSERTION.

**W. Spencer Armstrong, Solicitor**

**In the Supreme Court of the District of Columbia. Elizabeth Sutton and William H. Fearson v. The Unknown Heirs, Devisees, and Allenees of George Mason and Others. No. 25,700. Equity Docket No. 57.** The object of this suit is to establish complainant's title in fee simple, by adverse possession, in and to the north 20 ft. front on 19th st. by the full depth thereof, of original lot 12, in sq. 106, in Washington, D. C., improved by premises No. 913, 19th st. N. W. The defendants to this suit are the unknown heirs, devisees, and allenees of George Mason, of William Mason, of A. E. Grimes, and of Elizabeth Hooe, all deceased. On motion of the complainants, by W. Spencer Armstrong, their solicitor, it is this 1st day of November, 1905, ordered that the defendants cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. This order shall be published twice a month during said three months in the Washington Law Reporter and in The Washington Times. By the court: THOS. H. ANDERSON, Justice. True copy. Test: John R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk.

nov 8-10; dec 1-8; Jan 5-12

## SIXTH INSERTION.

**W. Spencer Armstrong, Solicitor**

**In the Supreme Court of the District of Columbia. D. H. Roland Drury v. Minnie Fuller and Others. No. 25,650. Equity Docket No. 57.** The object of this suit is to establish complainant's title in fee simple by adverse possession in and to lot 17, in Emily Fuller's subdivision of lots in square 60, in Washington, D. C., as said subdivision is recorded in the surveyor's office in Book H. D. C., page 40. The defendants to this suit are Minnie Fuller (if living), and the unknown heirs, devisees and allenees of Minnie Fuller (if deceased), of Andrew Scholfield, of Robert Leckie, of Ruth Fuller, of Calhoun Clark, and of Sarah F. Fitzgerald. On motion of complainant, by W. Spencer Armstrong, his solicitor, it is this 1st day of November, 1905, ordered that said defendant Minnie Fuller cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; and that the other defendants cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. This order to be published once a week for three successive weeks during the first month, and thereafter twice a month for two months, in The Washington Law Reporter and in The Washington Times. By the Court: THOS. H. ANDERSON, Justice. True copy. Test: John R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk.

nov 9-10-17; dec 1-8; Jan 5-12

## Legal Notices.

**Ellwood O. Wagenhorst, Solicitor**

**In the Supreme Court of the District of Columbia. Mary Sherman McCallum, Rebecca Alexander, Complainants, v. Mary A. Ellis, Susan E. Hedlan, the Unknown Heirs at Law of Susan Decatur, Defendants. Equity, No. 25,785.**

The object of this suit is to establish the titles by adverse possession of the complainants to the south 85 feet of original lot 18 of square 188 in the city of Washington, District of Columbia. On motion of the complainants, by their solicitor, it is, by the court, this 7th day of November, A. D. 1905, ordered that the defendant, Susan E. Hedlan, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause, as to her, will be proceeded with as in case of default. And, it is, by the court, further ordered, this 7th day of November, A. D. 1905, that the unknown heirs at law of Susan Decatur, and each of them, cause their appearance to be entered herein on or before the first rule day occurring three months next after the date of the first publication of this order; otherwise the cause, as to them, will be proceeded with as in case of default. This order, before the appearance days named for the defendant, Susan E. Hedlan, and for the unknown heirs at law of Susan Decatur, respectively, shall be published once a week for four successive weeks, and twice a month for three successive months, in The Washington Law Reporter and The Washington Evening Star. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk.

nov. 10, 17, 24; dec. 1, 15; Jan. 5, 12; Feb. 2, 9

**J. J. Darlington, Solicitor**

**In the Supreme Court of the District of Columbia. Alexander B. Hagner, Complainant, v. John H. Walter, Trustee, et al., Defendants. No. 25,588, Eq. Doc. 57.**

The object of this suit is to perfect complainant's title to parts of lots 9 and 18, square 141, Washington, D. C., beginning for said part of lot 18 at a point in the south line of north H street, distant 25 feet 3 3/4 inches west from the northeast corner of lot 13, running thence west on said south line of H street 40 feet 3 3/4 inches; thence south 183 feet; thence east 65 feet 7 inches; thence north 50 feet; thence west 25 feet 3 3/4 inches; thence north 133 feet to the place of beginning. And beginning for said part of lot 9 at the northeast corner of said lot, running thence south 51 feet 6 inches; thence west 20 feet; thence north 51 feet 6 inches; thence east 20 feet, to the place of beginning. On motion of complainant, it is, this 9th day of November, A. D. 1905, ordered that the defendants, James Westcott, Augustus Westcott, Samuel Westcott, Wilkin Westcott, Nathan Westcott, Mary Westcott, Katherine Westcott, Ann Eliza Barnard, and William Cary McHenry, John McHenry, Ellen Keyser, and Sophia Stewart, trustees, cause their appearance to be entered herein on or before the fortieth day exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; and that the defendants, the unknown heirs, devisees, and allenees of each of the following-named persons, to wit: Julius Forrest, trustee, John Brown, John Innes Clark, — Brown, — Ives, (late partners trading as Brown and Ives), George Gibbs, Walter Channing, (late partners trading as Gibbs and Channing), Samuel Elam, William Cook, James McHenry, John McHenry, Anna Boyd, Ramsey McHenry, Robert Oliver, William Hindman, James Hindman, James Stott, Sallie Stott, Samuel Stott, Charles Stott, Lucy Stott, Mary Stott, Elizabeth Stott, James Stott, junior, and Sarah Westcott, cause their appearance to be entered herein on or before the rule day occurring after three months from the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published for three months, once a week for three successive weeks, during the month following the publication of this order, and twice a month for each of the two succeeding months, in The Washington Law Reporter and Washington Post. WENDELL F. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk.

nov 10-17-24; dec 1-8; Jan 5-12

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### Assignment of Justices of the Supreme Court of the District.

On February 1, 1906, a change will take place in the assignment of the Justices of the Supreme Court of the District. Mr. Chief Justice Olabough will preside in Equity Court No. 1 and the Bankruptcy Court, taking the place of Mr. Justice Anderson. Mr. Justice Stafford will continue to preside in Equity Court No. 2 and in the Probate Court. Mr. Justice Gould will be assigned to Criminal Court No. 1, succeeding Mr. Justice Wright, and Mr. Justice Barnard will hold Criminal Court No. 2 and the District Court, and will also sit in the hearing of lunacy proceedings. Mr. Justice Wright and Mr. Justice Anderson will hold Circuit Courts Nos. 1 and 2.

### The District Bar Association.

The annual meeting of the Bar Association of this District was held on Tuesday evening, January 9, 1906. Officers for the ensuing year were elected as follows: President, Mr. Wm. F. Mattingly; vice-presidents, Mr. John C. Heald and Mr. Jesse H. Wilson; secretary, Mr. Charles W. Olagett; treasurer, Mr. Charles H. Oragin. Mr. R. Ross Perry, jr., Mr. Henry W. Sohon, and Mr. D. W. Baker were chosen as the additional members of the executive committee.

The chairman of the legislative committee reported that a new corporation law for the Dis-

trict will shortly be drafted and ready for submission to Congress. The by-laws of the association were amended so as to permit the legislative committee and board of directors to act on proposed District legislation which may be presented to Congress, without having the matter considered by the entire membership of the association; their action to be subject to revision by the association.

Another amendment to the by-laws authorized the reduction of dues for use of the library by lawyers who have practiced less than five years to \$10 per annum.

### Act Regulating Sales of Merchandise in Bulk—Bottling Business.

In *Cosgrove v. Senay*, recently decided by Mr. Justice Barnard, holding Circuit Court No. 1, the action was brought to recover the balance of the purchase money for a bottling business sold by the plaintiff to the defendant. The defendant set up by way of defense the requirements of the act of Congress of April 24, 1904 (33 Stat., 555), entitled "An act to prevent the fraudulent sale of merchandise in the District of Columbia," and the refusal of plaintiff to comply therewith. The plaintiff demurred to the plea, assigning as grounds therefor, first, that the act is unconstitutional, in that it unduly and in contravention of the constitution interferes with property rights; and second, that it is not applicable to such a sale as the one in question. In support of his first contention counsel for the plaintiff cited and relied upon the recent decision of the Court of Appeals of New York in *Wright v. Hart*, 33 Wash. Law Rep., 658, construing a similar statute. Mr. Justice Barnard, without passing upon the question of the constitutionality of the act, held that its provisions did not apply to the sale of such a business as that sold by the plaintiff to the defendant; and he therefore sustained the demurrer to the plea.

### Set-off—Claim for Damages for Wrongful Suing Out of Injunction.

In the case of *Washington Brewery Co. v. Cosgrove*, recently decided by Mr. Justice Barnard, the action was to recover the balance due upon an account stated. The defendant filed a plea of set-off, based upon the failure of the plaintiff to pay damages said to have been occasioned by the wrongful suing out of an injunction in an equity cause, the plea stating that the damages were "for breach of plaintiff's undertaking to make good to defendant all damages resulting from the inequitably suing out" of said injunction. The defendant filed a

supporting affidavit, but the plaintiff, claiming that the alleged cause of action stated in the plea was in tort, and for that reason could not be made the basis of a plea of set-off, moved for judgment under the 73d rule. The court, while holding that the cause of action stated in the plea was one in contract and not in tort, yet held that under Equity Rule 42, providing that the undertaking, upon the suing out of an injunction, shall contain a stipulation by the complainant and his surety that upon the injunction being dissolved the damages may be ascertained in such manner as the justice may direct, and that judgment against principal and sureties for said damages may be awarded in the decree dissolving the injunction, the defendant is equally bound to pursue the remedy for his damages in the manner pointed out by the rule and obtain a reference to the auditor for their ascertainment; and that such claim for damages could not be pleaded as a set-off. The motion for judgment under the 73d rule was therefore granted.

**Warehousemen—Receipts—Transfer—Notice of Existing Equities.**

In *Star Compress & Warehouse Co. v. Meridan Cotton Co.*, decided by the Supreme Court of Mississippi, in November, 1905 (39 So. 417), it was held that where a warehouseman issues a receipt acknowledging the receipt of certain merchandise, and binds himself to deliver the same or pay the cash market price thereof, and further stipulates that it shall be negotiable by indorsement, and that "no debt, demand, or set-off will be claimed against said" merchandise, he can not be permitted to assert, as against a subsequent bona fide holder of the receipt, that it was issued through mistake.

It was further held that the fact that one of the officers of a bank witnessed the execution of a paper by which a company undertook to indemnify a warehouseman, should it subsequently develop that a certain receipt then delivered to the company for certain merchandise was improperly issued, was not such notice as to put the bank on inquiry before acquiring from the company another receipt for a different quantity of merchandise.

**Claims in Bankruptcy—Usurious Note—Substitution of Claim for Money Had and Received.**—Where a creditor sought to prove a note made in New York at an usurious rate of interest, and the claim was disallowed, he should be allowed to amend his original proof by substituting a claim, if provable, "for money fraudulently obtained by said bankruptcy."—In *re Robinson et al.*, 14 Am. B. R., 626.

**Supreme Court of the United States.**

**ELEANOR D. SPEER ET AL., APPELLANTS,**  
v.  
**MICHAEL J. COLBERT, TRUSTEE, ET AL.**

**WILLS; BEQUEST TO INCORPORATED COLLEGE; SECTARIAN INSTITUTIONS; TRUSTS AND TRUSTEES.**

1. Whether or not an incorporated college or orphan asylum is a sectarian institution within the meaning of the 84th section of the Maryland Bill of Rights, as modified by section 457 R. S. D. C., making void gifts, etc., to a sectarian institution made less than a calendar month before the testator's death, is to be determined by the act of incorporation.
2. Georgetown College, St. Vincent's Orphan Asylum, and St. Joseph's Male Orphan Asylum, held not to be sectarian institutions, and bequests to them not void as in violation of said section of the Maryland Bill of Rights.
3. A college authorized by its charter to give instruction in the liberal arts and sciences, and to take and apply bequests, etc., for the use of the college, may take a bequest to be used as an endowment for the prosecution of research into colonial history.
4. Although, under the will, it is made the duty of trustees named therein to exercise supervision over the administration of such fund, the death or resignation of the trustees named will not defeat the bequest, but the court may appoint a trustee.

No. 153.—October Term, 1905. Decided January 2, 1906.

**APPEAL from the Court of Appeals of the District of Columbia. Affirmed.**

One of the appellants, Mrs. Speer, on the 5th of March, 1901, filed this bill in her own behalf and by her husband and next friend, Emory Speer, in the Supreme Court of the District of Columbia, to obtain a judicial construction of the will of her deceased brother, Ethelbert Carroll Morgan, who died, testate, on May 5, 1891, a resident of the District of Columbia. Answers to the bill were duly filed, and the Supreme Court gave judgment construing the will, which, upon appeal to the Court of Appeals of the District of Columbia, was reversed, and judgment was entered, construing the will, by the Court of Appeals. From that judgment Mrs. Speer, together with some of the parties defendant in the suit, appealed, and brought the case here for review.

The will in question was executed on the 22d day of April, 1891, and the testator died May 5, 1891. He was never married, and left as his next of kin and heirs at law two brothers and three sisters, viz: James D. and Cecil Morgan, and Mrs. Speer, the plaintiff in this suit, and Mrs. Anna M. Mosher and Mrs. Ada M. Hill. He appointed William J. Stephenson and John H. Magruder the executors and trustees of his will, the former of whom subsequently died and the latter resigned, and Michael J. Colbert and James Mosher were duly appointed by the court as substituted trustees under the will. The estate of the testator was treated by him in his will as consisting of two parts, that which he had himself accumulated and that which came to him through the will of his father, who died in June, 1889. His own accumulations amounted to a little over twenty-three thousand dollars, while the estate which he received from his father somewhat exceeded fifty-five thousand dollars, the total being a trifle over seventy-eight thousand dollars. The estate of the deceased had been received by the substituted trustees, Colbert and Mosher, when this bill

was filed by Mrs. Speer against them, and also against Mrs. Anna M. Mosher, the wife of James Mosher, and a sister of the testator, and also against the two corporations incorporated as St. Vincent's Orphan Asylum and as Trustees of St. Joseph's Male Orphan Asylum, both being in the District of Columbia, who were made parties because, as the plaintiff alleges in her bill, they claim to be the beneficiaries under the clauses of the will of the testator, leaving a legacy to be equally divided between St. Vincent's and St. Joseph's Catholic Orphan Asylums in the city of Washington, and in order that they might make proof of their identity, if any existed, with the St. Vincent and also with the St. Joseph Catholic Orphan Asylums, mentioned in the will, and that they might be bound by the adjudication which might be made by the court in all respects hereafter; and also against John D. Whitney, James P. Fagan, Edward McTammany, James B. Becker, and Edward I. Devitt, who, the plaintiff alleged, claimed to be, by succession, the president and directors of Georgetown College, and who, as such, claimed an interest in the estate of the testator, under the clauses of his will mentioning Georgetown University, in the District of Columbia, and the plaintiff alleged that they were made defendants in order that they might make proof of succession to the original incorporators of Georgetown College, and that their claims to the legacy mentioned in the will might be adjudicated by the court. The bill alleged that the will of the testator was duly admitted to probate in the proper court in the District of Columbia. After making certain provisions, not here material, the will of the testator is as follows:

"All the rest and residue of my estate real, personal and mixed of which I am now possessed or shall possess at my death (other than my share under my father's will of which I would become possessed at my mother's death) I give bequeath and devise to my trustees hereinafter named and their heirs and assigns with full power to sell convey mortgage and reinvest, in trust nevertheless to apply the income and profits to the use and benefit of my sisters Eleanora Speer wife of Emory Speer and Minnie Mosher wife of James Mosher in equal parts during their lives and at their death to deliver and convey each sister's share to her issue and if either sister die without issue living at her death, to deliver and convey said part to the survivor or her issue if any survive her.

"And if my said two sisters shall both die leaving no issue living at their deaths I direct my said trustees to deliver and convey all the said rest and remainder of my estate (excepting my share aforesaid under my father's will) to Georgetown University in the District of Columbia to be an endowment in equal shares of the literary and medical departments thereof

"And I hereby give bequeath and devise any and all the estate real personal and mixed devised to me under my father's will and to which I become entitled to have and possess upon my mother's death to my trustees hereinafter named their heirs and assigns forever with full power to sell convey mortgage

encumber and reinvest in trust nevertheless to pay and see to the application of—

"First the sum of ten thousand (\$10,000) dollars to Georgetown University in the District of Columbia to be used and held as an endowment for the prosecution of research in the colonial history of Maryland and the territory now embraced in the District of Columbia and obtaining and preserving archives and papers having relation thereto, and known as the James Ethelbert Morgan fund.

"Second a sum not to exceed five thousand (\$5,000) dollars to be applied and expended under the personal supervision of my trustees to the purchase and erection of a chime of bells and either a side altar or memorial window or a bell, and either a side altar or a memorial window for some one Catholic church . . . said church to be in the District and to — designated by my mother by her last will or otherwise and if she fail so to do I direct my trustees to carry out this trust as a memorial of my mother Nora Morgan and donate the same to some Catholic church . . . giving a preference, if there be one, built by the Jesuits. And in event this clause & gift be void I direct said sum not exceeding \$5,000 five thousand dollars shall be equally divided between Saint Vincent's and St. Joseph's Catholic orphan asylums in the city of Washington.

"Third. A sufficient sum not to exceed three thousand dollars the income to be applied to maintain a scholarship in the study of medicine preferably in Georgetown University; otherwise in some medical college in the District, to be known as the E. Carroll Morgan scholarship.

"Fourth, the sum of five thousand (\$5,000) dollars to form a fund known as the E. Carroll Morgan fund or scholarship to be applied as I may hereafter verbally indicate to my trustees or if I fail, as my trustees with the advice of proper persons may decide to the maintenance of a scientific department, or the foundation and the application of the income to a scholarship in the classical department, in the University of Georgetown in the District of Columbia. That the qualifications under both or either of the two last clauses of this will shall be that the applicant be born in the District of Columbia and at the time or within a year a student in a Catholic or a public school of the District of Columbia and most excellent in a competitive examination conducted by the faculty of the University of Georgetown.

"And lastly as to all the rest and residue of my aforesaid share of my father's estate my said trustees their heirs and assigns shall hold the same for the benefit of my aforesaid sisters Eleanora and Minnie upon the same limitations conditions remainders and powers and in the same manner as the trustees under my father's will, will then hold retain and possess the 'remainder' and bulk of the respective shares of my said two sisters I wish my brother Cecil to have my share of my father's library I nominate and appoint William J. Stephenson and John H. Magruder my executors and trustees of this my last will and testament.

"In witness whereof I have signed and sealed and published and declared this as my will this 22nd day of April, 1891."

The plaintiff alleged that the bequest and de-



vise to Georgetown University, upon the death of the two sisters, without issue living at the time of their death, were void, because, as alleged, there was no such incorporated institution in the District of Columbia as Georgetown University, capable of taking the bequest and devise, and also upon the ground that, assuming there was a simple misnomer, and that Georgetown College was meant instead of Georgetown University, yet, even upon that assumption, Georgetown College was incapable of taking the devise and bequest, because it was under the supervision and control of the Order of Jesuits, and that the college was therefore a sectarian institution. It was also averred that the bequest of \$10,000 to Georgetown University in the District of Columbia, to be used and held as an endowment for the prosecution of research in the colonial history of Maryland and the territory now embraced in the District of Columbia, "was void, upon the same ground, and also because there was no charter power or authority in Georgetown College (assuming that institution to be meant) to receive the bequest." Also that the bequest of a sum not to exceed the amount of \$5,000, to be applied and expended under the personal supervision of the trustees, for the purchase and erection of a chime of bells, etc., was void, as was also the alternative bequest of an amount not to exceed that sum for the benefit of the two Catholic orphan asylums in the city of Washington, the alternative bequest being void on the ground that those asylums were under the charge and control of persons belonging to religious orders, and therefore incapable of taking the bequest, and on the further ground that the amount of the bequest was uncertain. The bill averred also that the remaining bequest, of a sum not to exceed \$3,000, and also the bequest of \$5,000, for the purpose of maintaining and founding scholarships, etc., were void, because of their uncertainty and the want of clearly defined conditions under which the funds should be applied. The defendants answered the bill, and none of them conceded the validity of the claims made therein. Colbert, one of the substituted trustees, and also John D. Whitney and others, for and on behalf of the president and directors of Georgetown College, and also the trustees of St. Joseph's Male Orphan Asylum, and of St. Vincent's Orphan Asylum, all claimed the validity of the bequests contained in the will, while the answer of Mosher, the other substituted trustee, simply expressed his willingness that the provisions of the will of the testator should be given effect and carried out only so far as they were legal and valid.

On the trial proof was taken in regard to the name and corporate status of Georgetown College, claiming the devises and bequests made to and on behalf of Georgetown University.

The Supreme Court, in an elaborate opinion (reported in 31 Washington Law Reporter, 630, 646), held that the devises and bequests to trustees named in the will, of the testator's estate, exclusive of that which came to him under the will of his father, were valid and effectual. The court also held that all the clauses and sub-clauses in the will of the testator, disposing of property acquired by the testator under

his father's will, were void, and that the property therein spoken of became part of the residuum of the estate of the testator, and vested in the beneficiaries entitled to take under the residuary clause of the will. The Court of Appeals, upon review of this judgment, held that the clauses of the will were valid, except the bequest of "a sum not to exceed five thousand dollars," to be expended under the personal supervision of the trustees in the purchase and erection of a chime of bells, and the erection of an altar or memorial window, etc.; but the alternative bequest of the sum not to exceed five thousand dollars, to be equally divided between St. Vincent and St. Joseph's Orphan Asylums in the city of Washington, was good. It also held that the clause in the will, providing for the application of five thousand dollars to form a fund to be known as the E. Carroll Morgan fund or scholarship, to be applied as "I [the testator] may hereafter verbally indicate to my trustees or if I fail, as my trustees with the advice of proper persons may decide, to the maintenance of a scientific department, or the foundation and the application of the income to a scholarship in the classical department in the University of Georgetown in the District of Columbia," was void. No appeal has been taken from this last portion of the judgment of the Court of Appeals.

*Mr. Conway Robinson, Mr. O. J. Wimberly, and Mr. Marion Erwin, for the appellants.*

*Mr. Geo. E. Hamilton and Mr. M. J. Colbert for the appellees.*

Mr. Justice PECKHAM, after making the foregoing statement, delivered the opinion of the court.

The opinion of the Court of Appeals in this case, delivered by Chief Justice Alvey (24 App. Cas. D. C., 187: 32 Wash. Law Rep., 678), is entirely satisfactory to us, and leaves little to be said in addition. For the purpose, however, of simply stating the opinion of this court upon the various questions, without discussing them at length, we add what follows.

The appellants insist that the gift of the property to the Georgetown University is void, as having been made to a sectarian institution less than one calendar month prior to the testator's death, and that such disposition was therefore in violation of section 457 of the Revised Statutes of the District of Columbia. That section makes valid and effectual all sales, gifts, and devises prohibited by the thirty-fourth section of the Declaration of Rights of the State of Maryland, adopted in 1776, "provided, that in case of gifts and devises, the same shall be made at least one calendar month before the death of the donor or testator" (14 Stat., 232; passed July 25, 1866). The thirty-fourth section of the Maryland Bill of Rights makes void:

"Every gift, sale or devise of lands to any minister, public teacher or preacher of the gospel as such, or to any religious sect, order or denomination, or to or for the support, use or benefit of or in trust for any minister, public teacher or preacher of the gospel as such, or any religious sect, order or denomination; every gift or sale of goods or chattels to go in succession or take place after the death of the seller or donor, to or for such support, use or



benefit, and also every devise of goods or chattels to or for support, use or benefit of any minister, public teacher or preacher of the gospel as such, or any religious sect, order or denomination, without leave of the legislature."

It is also insisted that there is a misnomer of the corporation now claiming the right to the bequest, inasmuch as such corporation was incorporated under the name of the "The President and Directors of Georgetown College," while the bequest is to "Georgetown University, in the District of Columbia." It is contended that Georgetown College is a corporation, incorporated on the 10th of March, 1844, under an act of Congress (6 Stat., 912, entitled "An act to incorporate Georgetown College, in the District of Columbia"), and that there was and is another institution in Georgetown, sometimes called the University of Georgetown or Georgetown University, which was distinct from the college incorporated under the above-mentioned act of Congress, and not covered by it, and that the testator knew of this so-called university, that he was a professor therein, and that such university was, at the time of the testator's death, a sectarian institution within the thirty-fourth section of the Maryland Bill of Rights above mentioned. The fourth section of the above act expressly provides that no misnomer of the corporation shall defeat or annul any donation, etc., to the corporation. We agree with the Supreme Court and the Court of Appeals of the District of Columbia in the opinion that there was not, at the time of the execution of his will by the testator, or at the time of his death, any incorporated institution existing as Georgetown University or University of Georgetown, separate and apart from, or having powers other than, those granted to "The President and Directors of Georgetown College," by the act of Congress of 1844, above cited. It appears in the evidence that this college was frequently spoken of as Georgetown University, and known as such, but the evidence entirely fails to show that there were two incorporated institutions, the one, "Georgetown University," and the other, "The President and Directors of Georgetown College." And we have no doubt that the testator meant the corporation called Georgetown College when he used in his will the word university. He meant to give the property to a corporation, and to one that could take it, and the evidence shows there was no other corporation of that kind. Upon this question the Court of Appeals said: "It was expressly alleged in the bill as a fact that there is no such incorporated institution as Georgetown University, though Georgetown College is frequently referred to and spoken of as Georgetown University, notwithstanding it has never been incorporated as such. It is simply a popular designation applied to the college. It is alleged in the bill that the defendants Whitney and others, under the name of president and directors of Georgetown College, in this District, claim to be the beneficiaries entitled to the legacies mentioned in the will of the testator as for Georgetown University. It is not attempted to be shown that there was, or is, in this District any such incorporated institution of learning as 'Georgetown University,' separate from

and independent of "Georgetown College." It was not to any unincorporated so-called institution that the testator intended to leave the property, but to one that was incorporated and capable of taking a legacy.

Various acts of the legislature of Maryland were referred to on the argument, particularly the act of 1792, chapter 55; that of 1797, chapter 40; the act of 1805, chapter 118; that of 1808, chapter 37; also the act of Congress of March 1, 1815, chapter 70 (6 Stat., 152), entitled "An act concerning the College of Georgetown in the District of Columbia;" also that of March 2, 1833 (6 Stat., 538), in which the Government grants certain lots in Washington City to the college above referred to. These various statutes were cited for the purpose of showing the validity of the claim that an institution called Georgetown University, as distinct from Georgetown College, was meant in the will of the testator. In regard to these particular acts, we think they do not bear upon the case other than, as remarked by the Court of Appeals, to show the origin and growth of Georgetown College, and to identify the early foundation of the school with the president and directors of Georgetown College, as that institution was fully and completely incorporated by the above-cited act of Congress of March 10, 1844. That act must be resorted to as the measure of the powers and duties, as well as to define the character of the corporation created thereby. *Bradfield v. Roberts*, 175 U. S., 291.

Taking the character of the college from the act of Congress, we are of opinion that it is not a sectarian institution, or within section 34 of the Maryland Bill of Rights. The reasoning upon this subject (as well as that upon the alleged misnomer of the college) set forth in the opinion of the Supreme Court, 31 Washington Law Reporter, 630, and in that of the Court of Appeals, is entirely satisfactory, and we concur therein.

There is, in our judgment, no merit in the contention that the persons claiming as president and directors of the college are not the legal successors of the original incorporation. There is no evidence that the same has been dissolved. The franchise of a corporation is not taken away or surrendered, nor is the corporation dissolved by the mere failure to elect trustees. We do not think that in this case there was any failure to elect, nor was there any dissolution.

We now come to the consideration of the validity of the disposition made of the testator's property, which came to him from the will of his father. The testator gives and bequeaths all of that property to his trustees, thereafter named in the will, and their heirs and assigns forever, "with full power to sell, convey, mortgage, incumber and reinvest, in trust nevertheless to pay and see the application of: First, the sum of (\$10,000) ten thousand dollars to Georgetown University in the District of Columbia, to be used and held as an endowment, for the prosecution of research in the colonial history of Maryland and the territory now embraced in the District of Columbia, and obtaining and preserving archives and papers having relation thereto, and known as the James Ethelbert Morgan fund."

Aside from the objections to the bequest to Georgetown University already considered, a further objection is made, and the disposition is alleged to be void, because there is no charter power in any institution which could take under this bequest that authorizes it to prosecute such research and obtain and preserve the archives relating thereto. It is well said, in the opinion of the Court of Appeals in this case, that the act of incorporation of Georgetown College in 1844 confers "corporate power upon the institution for the instruction of youth in the liberal arts and sciences, and also clothes the corporation with power to take any estate whatsoever, in any lands, etc., or goods chattels, moneys and other effects, by gift, bequest, devise, etc., and the same to grant, convey or assign, and to place out on interest for the use of said college and to apply the same thereto. The cultivation of historical research would seem to be a part of a liberal education, such as should be encouraged by a college intended to confer degrees upon students in acquiring a liberal education in the arts and sciences." In *Jones v. Habersham* (107 U. S., 189), it is said that "A corporation may hold and execute a trust for charitable objects in accord with or tending to promote the purpose of its creation, although such as it might not by its charter or by general laws have authority itself to establish or to spend its corporate funds for. A city, for instance, may take a devise in trust to maintain a college, an orphan school, or an asylum."

Although it is, under the will, the duty of the trustees therein named to exercise supervision over the administration of the fund, nevertheless the death or resignation of the trustees named in the will can not, and does not, defeat the bequest. There is not such a personal trust as renders it necessary to have the personal action of the trustee named in the will, and the trust does not fail upon the death or resignation of the named trustee. The court may appoint his successor. *Inglis v. Trustees of Sailors' Snug Harbor*, 3 Pet., 99, etc.

Both courts below have held the bequest of a sum not to exceed five thousand dollars, to be expended under the personal supervision of the trustees in the purchase and erection of a chime of bells, etc., to be void. We agree with those courts in that respect. We also agree with the views of the Court of Appeals, holding that the alternative bequest of this same sum, not to exceed five thousand dollars, to be divided equally between the two orphan asylums, is valid. There is no material misnomer in either case, although they are incorporated institutions, one by the name of St. Vincent's Orphan Asylum, and the other as St. Joseph's Male Orphan Asylum, in the city of Washington, and they are referred to in the will simply as St. Vincent's Orphan Asylum and St. Joseph's Catholic Orphan Asylum.

Nor does the bequest violate the thirty-fourth section of the Maryland Bill of Rights, already referred to. The same reasoning on that point governs this bequest as is applicable to the bequest to the University of Georgetown. Neither of these orphan asylums is a sectarian institution under the acts of incorporation. The other objection made is that the clause directs that a sum, not exceeding five thousand dollars,

shall be equally divided between these orphan asylums; and it is said that there is such uncertainty in the amount of the bequest as to render it impossible to execute it, that it might be fulfilled by dividing a dollar between the asylums, or any other sum within the five thousand dollars named in the bequest. But it seems to us that the intention of the testator is clear to give the full sum of, but not to exceed, five thousand dollars. That is, he gives five thousand dollars to be equally divided between these two asylums. While the amount is not to exceed five thousand dollars, the direction for an equal division, taken in connection with the other facts, render it in our opinion clear that the intention of the testator was that that sum should be the amount of the bequest. Courts are always reluctant to hold a bequest void for uncertainty, and they only do it when actually compelled to do so by the language used. *Inglis v. Trustees of Sailors' Snug Harbor*, 3 Pet., supra. If the testator had really intended that any less sum than five thousand dollars should be disposed of by and equally divided under this clause in his will, he would have said so.

Objection is also made to the bequest of "a sufficient sum, not to exceed three thousand (\$3,000) dollars, the income to be applied to maintain a scholarship in the study of medicine, preferably in Georgetown University; otherwise in some medical college in the District, to be known as the E. Carroll Morgan scholarship." The first objection, as to the uncertainty of the amount of the bequest, we do not regard as meritorious. It is a sum sufficient to found a scholarship, and it shall not exceed, in any event, \$3,000. If one can be founded, within the conditions named in the will, for a less sum than \$3,000, then that less sum only can be used. The discretion to be exercised by the trustees in selecting the college with which to connect the scholarship does not render the bequest void. The testator has, by this clause in his will, himself expressed his preference for Georgetown College, if the scholarship can be maintained in that institution, but if not, it is to be a scholarship in some medical college of the District. This, we think, is not an improper or uncertain disposition of the bequest, or an illegal placing of a discretion in the trustees under the will. See *Attorney-General v. Gleg*, 1 Atk., 356; *Attorney-General v. Fletcher*, 5 L. J. (N. S.), 75; 2 *Perry on Trusts*, 4th Ed., sec. 721.

The last bequest objected to is that of five thousand dollars, to form a fund known as the E. Carroll Morgan fund or scholarship, to be applied as the testator might thereafter indicate to his trustees, etc. This has been declared void by both courts, and no appeal has been taken from the judgment of the Court of Appeals adjudging that item to be void. That bequest being adjudicated invalid, the fund provided for therein forms part of the residue of the testator's estate, and passes under the residuary clause of the will.

These views call for an affirmance of the judgment of the Court of Appeals, with costs to the several parties, to be paid out of the residuary fund, as provided for by the judgment of that court. Affirmed.

All kinds of blanks for sale at this office.

## Court of Appeals of the District of Columbia.

EMORY A. BRYANT, APPELLANT,

v.

THE DISTRICT OF COLUMBIA DENTAL SOCIETY.

CORPORATIONS; EXPULSION OF MEMBERS; MANDAMUS.

1. A corporation formed for the advancement of the dental profession and promotion of social intercourse and kindly feeling among its members has the right, even in the absence of express statutory authority, to make by-laws and to exercise the power of a motion.
2. Such a corporation has the power to determine whether an act charged against a member is unprofessional within the meaning of its by-laws; and its determination can be reviewed by the courts only when it is clearly shown that it was made ultra vires or contrary to good faith.
3. Held, upon a review of the proceedings resulting in the expulsion of the relator from such society, that he was accorded the trial provided for by the by-laws thereof, and that his petition for mandamus to compel his reinstatement was properly dismissed.

No 1809. Decided January 4, 1906.

APPEAL by petitioner from an order of the Supreme Court of the District of Columbia, at law, No. 46,975, dismissing a petition for a writ of mandamus. Affirmed.

*Mr. Irving Williamson* and *Mr. Wm. G. Johnson* for the appellant.

*Mr. Conrad H. Syme* and *Mr. Chas. A. Douglass* for the appellees.

*Mr. Justice DUELL* delivered the opinion of the court.

Appellant applied for a mandamus to compel the District of Columbia Dental Society to restore him to his membership therein. To his petition the society filed an answer, which was demurred to. The demurrer was overruled, with leave to appellant to plead over, but he elected to stand upon his demurrer. Thereupon an order was made dismissing the petition for the writ, and from that order this appeal was taken.

The record shows that appellant was a practitioner of dentistry in the District of Columbia and a member of the District of Columbia Dental Society. At a stated meeting of the society held on April 19, 1904, and attended by appellant, he was expelled by a vote of thirty-nine to fifteen. The by-laws of the society gave it authority to expel a member. Section one of article three, relating thereto, is as follows:

"Any act of special immorality or unprofessional conduct alleged to have been committed by a member shall be referred to a special committee of three, who shall examine into the case and report at the next regular meeting.

"Whereupon, if the charge has been sustained, the offending member may, by a vote of two-thirds, be reprimanded or expelled, provided the accused shall have an opportunity for defense before final action is taken on his case."

The facts, circumstances, and incidents leading up to the expulsion, generally stated, are these:

The District of Columbia Dental Society was incorporated under the District laws with the object, as stated in its certificate of incorporation, for "the advancement of the dental profession and the promotion of social intercourse

and kindly feeling among its members." It seems that Congress in 1892 provided by statute (27 U. S. Stat., pp. 42-3) for a Board of Dental Examiners to be appointed by the District Commissioners. The board was given power to license dentists to practice in the District. By an amendment to the original act the conditions upon which a license could be granted by the board to dentists coming from other localities were altered. These conditions apparently did not suit the views of the Board of Dental Examiners. They sent out a circular letter suggesting to the boards of the various States and Territories that they certify more than the act of Congress required in order to admit dentists to practice in the District of Columbia without undergoing an examination. This action of the board did not meet the approval of the appellant, who addressed a letter to the Commissioners of the District of Columbia objecting to the circular letter and stating in part:

"Now, Mr. Commissioners, I object to the circular, first, as the one who drafted the law; second, as the one through whose efforts it was passed; third, for the fact that it is a misstatement of facts; fourth, that it discredits a law these men are there to enforce; fifth, that its effect, if left alone, would be to nullify the attempt to get national interchange of dental licenses, by means of having the same law in every State and Territory in the Union; sixth, that the action of this board is unprecedented, unethical, unprofessional, false to its office and the profession it represents and the oath they took when they accepted their offices.

"I suggest, Mr. Commissioners, that your honorable body direct the Board of Dental Examiners of the District of Columbia to withdraw this circular at once by due notice to those to whom they have sent the same, and issue a new circular, based upon facts, truth, and honesty.

"Very respectfully submitted,

"EMORY A. BRYANT."

The members of the Board of Dental Examiners were not only officials of the District, but were Dr. Bryant's fellow members of the Dental society.

It further appears that legislation of interest to the dental profession was pending in Congress and that the members of the District society had different views upon such legislation. The appellant did not hesitate to state his position and criticize his fellow members in terms more forcible than polite. He sent letters to various parties, among others to the president of the National Dental Association, in one of which, referring to his fellow members of the District society and their course relative to the proposed legislation, he wrote:

"Of all the damn fool moves I ever saw, this latest takes the cake. I hope they will be able to get their bill, and then I know one man who will not be THE MAN. The local disturbing conditions is now transferred from the local to the national body, and if there is such a thing as justice in the national asso., it will be short and sweet. If personal animosities are to be the backbone of legislation for the profession, the quicker the thing is known, the better it will be for all hands.

"There is no one on earth that deplores the personal fight here more than I do, but I am the

last one on earth to stop fighting the filth that has control in this locality. Like my friend, Senator Tillman, 'When I have to handle manure, I do it with a pitchfork.' I do not mind them fighting me personally so long as this does not injure any one but myself, but when it comes to using my profession as a mop to swipe me with at the sacrifice of my profession or my friends, that is another matter.

"I had intended to drop the matter when they had succeeded in getting their bill endorsed by the Southern branch in the first instance, but when they came back a second time, and the matter became by their own doing, that is where I change my tactics and trouble begins. I once before told them 'if it was politics they wanted, I would give them all they wanted and a damn sight more before I was through with them,' and I kept my word. I just give you the tip, 'there will be hell to pay' before this thing ends, I am not engaged in fighting men, but I am out for 'beans' on their principles and motives. 'The black flag is up and I have nailed her to the top mast.' No quarter will be asked or will it be given. A fair field and no favors is all I ask. I will sign my name in full to anything I say or do. I am not under cover, but out in the open.

"Sincerely and fraternally yours,

"EMORY A. BRYANT."

The writing of these letters was followed by the preferring of charges against appellant by members of the society. The first of these is as follows:

"WASHINGTON, D. C., March 15, 1904.

We, the undersigned, do hereby charge Dr. Emory A. Bryant, a member of this society, with the following acts of unprofessional and unethical conduct:

1st. Under date of March 10, 1904, he wrote the Commissioners of the District of Columbia, charging the board of examiners, every member of which is a member of this society, with unprofessional and unethical conduct, false to the oath taken by them and to the profession they represent, and insinuates that they have issued a circular letter at variance with truth and honesty.

2d. That he interfered with the work of a regular committee appointed by this society on legislation.

3d. That in the evening of February 19th, at an adjourned meeting of this society, he said that the members of this society were too small cattle for him to deal with, and before taking his seat characterized the members as being a lot of cats.

4th. That he has been a disturbing element in this society for the past twelve months.

(Signed)

JNO. H. LONDON.

O. W. APPLER.

M. F. FINLEY.

W. E. DIEFFENDERFER."

A certified copy of the letter to the District Commissioners was filed with the charges. A portion of this letter we have quoted.

The second charges read:

"It is hereby alleged that the accompanying letters, written and signed by Dr. Emory A. Bryant, a member of this society, evidence unprofessional conduct on the part of the said Bryant in this, that the said letters are, (a)

false in a number of material statements; (b) that they are vicious in tone; (c) that they disclose a mischievous and unnaturally antagonistic and evil purpose; (d) that they contain threats to carry on a contention by him, the said Bryant, which is discreditable to the dental profession, dishonoring to the Nat. D. Asso., and degrading to this society, and which contention, if further pursued in the spirit and manner adopted by the said Bryant, is calculated to embarrass, discredit and defeat express worthy objects of the profession.

"In connection with this alleged unprofessional conduct of Dr. Emory Bryant, your attention is invited to the first ten lines of article 8, section 1, of your by-laws.

(Signed) M. F. FINLEY,  
WMS. DONNALLY,  
D. N. RUST,  
H. M. SCHOOLEY."

Accompanying these charges was the letter, among others, written to the president of the national association, from which we have quoted.

Upon receipt of these charges the president appointed a special committee of three, in accordance with the terms of the by-laws, to examine into the case and report its findings at the next regular meeting of the society. The appellant objected to two of the members named, with the result that the president substituted two others in their places, to whom appellant made no objection. The charges were then read to the society and referred to the committee for consideration and report.

The answer sets out the further steps that were taken, and, in view of the demurrer, they must, so far as they state facts, be taken as proven. It is recited that, after the committee was appointed, "that thereupon the charges hereinbefore set forth having been read by the secretary of said society they were by the president referred to said committee for consideration and report; that thereafter and before the next regular meeting, which was set for April 19, 1904, the said committee met and determined upon the method of procedure to investigate said charges, which required that all allegations made in support thereof should be submitted in writing, that the petitioner should have a full and complete copy of the charges and specifications, and of all allegations in support thereof, and should be given ample opportunity to meet the same by counter-statements, and by such statements as he, himself, desired to make; that petitioner raised no objection whatever to said mode of procedure and did not demand the right to have witnesses sworn or cross-examined or to rule out testimony taken, but in all things acquiesced in the method of trial adopted by said committee; that copies of the charges and specifications and of all statements made in support thereof were furnished to the petitioner, and that he replied to the same in writing, submitting two voluminous statements and many documents in defense to said charges; that petitioner admitted the authorship of the letters hereinbefore referred to, and set forth as exhibits; that petitioner, having been given full and ample opportunity to make his defense, and having availed himself of the same, and having entered no objection to the method and mode of

investigation pursued by the committee, the committee thereupon proceeded to consider said charges separately and took a separate ballot as to each charge, which said balloting resulted after the consideration of the evidence taken in support or defense of each charge, in the committee unanimously finding every charge made sustained, with the single exception of charge designated as charge four. That on the 19th day of April, 1904, at the next stated meeting of the defendant corporation, at which the petitioner was present, and in which he participated, the aforesaid committee made its report, its chairman having first read in open meeting the charges which had been preferred against the petitioner as aforesaid, the report of said committee—as follows, to wit:

"We, your committee appointed to investigate the charges and allegations preferred against Dr. Emory A. Bryant, an active member of this society, beg leave to report that we have carefully considered the charges and allegations, and the answers thereto, and, after due consideration, submit the following as our finding, to wit:

"In regard to the charges preferred by Drs. London, Appler, Finley, and Donnally, charges 1, 2, and 3 are sustained; charge 4 is not sustained.

"In regard to the allegations signed by Drs. Finley, Donnally, Rust, and Schooley, we find that allegations marked a, b, c, and d are all sustained."

It is charged as error that the court should not have dismissed appellant's petition, but should have granted the peremptory writ of mandamus, and sustained the demurrer for the following reasons:

"(a) Because the acts alleged against him were not within the provisions of the by-laws.

"(b) Because the alleged evidence of violation of the by-laws was not submitted to his triors, the society."

Referring to the first ground, we consider that the rule laid down in *De Yturvide v. Metropolitan Club*, 11 D. O. App., 180: 25 Wash. Law Rep. 463, is controlling in this case. It is there said:

"There is no longer any question of the right of a corporation, such as the respondent in this case, to make by-laws, even in the absence of express statutory power, and to exercise the power of a motion, as incident to the corporation."

The ground upon which the expulsion of appellant was predicated was the violation of a by-law made for the good government of the club, and as this court said in the *De Yturvide* case, it "being an act against his duty to the corporation, the respondent not only had the legal power to adjudge what constituted conduct unbecoming a gentleman, but it was the only tribunal which could exercise such power."

In the present case the charges were based upon a violation of the by-law providing for expulsion of a member for "unprofessional conduct." That one set of charges stated that the acts were "unprofessional and unethical" does not, as we look at it, take the charge outside the by-law. The question the society was called upon to determine was as to the acts charged being "unprofessional." The appellant

would have an unprofessional act, as that term is used in the by-law, defined in its strictest sense. We think in this he is incorrect. The society is a semi-social organization. One of its objects is to promote social intercourse and kindly feeling among its members. The letters written by appellant characterizing the acts of his fellow members did not tend to promote the objects aimed at by the society. In them we find a definition of what he himself considered an "unprofessional" act. In his letter to the District Commissioners he charged that his fellow members composing the Board of Dental Examiners had been guilty of "unprofessional" acts in sending out the circular to which we have referred. That letter, compared with the letters written by him, is most inoffensive. But to charge, without justification, an act of his fellow members, though that act was done in an official capacity, as "unprofessional, false to its office and the profession it represents and the oath they took when they accepted their offices," is at least sufficient to warrant us in refusing to hold that the society, in treating such charges as warranting the expulsion of a member of the society for an unprofessional act, has exceeded its power or been guilty of fraud or bad faith. The language used by this court in *De Yturvide v. Metropolitan Club*, supra, is directly in point.

"Whether the conduct of the relator in accusing the lady, a daughter of a member of the club, within the club to members thereof, of writing anonymous letters, was such as made it unbecoming a gentleman within the meaning of the by-law, was a question, as we have seen upon the authorities already cited, that could only be determined by the corporate authorities; and that it is only where it is made clearly to appear that such determination was ultra vires, or made contrary to good faith, that the courts can interfere. The courts can not sit as appellate tribunals to review the judgments of the corporate authorities in such cases. The parties concerned, having constituted their own domestic tribunal for the trial and determination of questions of alleged violation of purely corporate duty, they must abide such determination, unless the authority be transcended or there be fraud or bad faith shown."

2. A more serious and difficult question is whether the appellant was accorded the trial provided by the by-law. We have shown that the proper committee was regularly appointed and that its personnel was satisfactory to appellant. The regularity of the hearing before that committee is not questioned, and it is not claimed that appellant was not accorded every opportunity to present his defense before the committee. Upon the coming in of the committee, which reported all but one of the charges proven, it was moved and seconded that the appellant be expelled. A motion was also made and seconded that all of the evidence in the case be submitted. That motion was defeated. It would appear as though its production was not very strongly insisted upon, for the record is silent as to how the vote was taken or whether any members other than the mover and second of the motion were in favor of it. To legal tribunals accustomed to hear and decide cases on evidence duly presented it seems improper

in the highest degree to refuse to listen to the evidence. It must be remembered, however, that the members of the society are laymen and not accustomed to legal proceedings. When appellant asked for fifteen minutes in which to make a statement or defense he was accorded double the time he asked. He made no attempt to get the evidence before the society, but largely occupied the time in personal attacks upon his fellow members. Furthermore, the charges were mainly based upon letters admittedly written by appellant. It is not a violent presumption to assume that the members were familiar with the letters and did not care to consider them further. His tongue seemingly was as ready as his pen, and his employment of the half hour accorded him was doubtless greater than that of his fellow members. He had taken the sword in his hand, and he knew that he was to perish by the sword. Forms did not trouble him. His was a lost cause, and he knew full well that no rehearing of the evidence would avail, and he evidently preferred what might be termed a heart-to-heart talk rather than to employ his time in stating his defense and how it had been made out before the committee. The learned justice before whom the case was tried, in his opinion, correctly interprets the by-law under which the expulsion proceedings were had. He says:

"That when the charges have been preferred in proper manner against a member of the society, they shall be referred to a special committee of three, who shall examine into the case and report at the next regular meeting. Now, that was done in this case. There is no question about it, as I understand or remember as to the sufficiency of the specifications of misconduct, and, so far as the matter of form went, they were referred to the committee of three, who did examine and who did report. 'Whereupon,' the by-law proceeds, 'if the charge has been sustained, the offending member may, by a vote of two-thirds, be reprimanded or expelled.'"

Now, I do not believe that that includes the rehearing by the whole society, that it is simply, as the language indicates, a report made by the committee to the society, upon which the society acts either affirmatively or negatively—either accepts it or rejects it—and a member of that society, in determining his conclusions as to that report, would have the right to call for the testimony upon which the committee based its report, or would have the right to question the accuracy of the report, but that is a right which is for the members of the society before they vote upon the report. This man, the doctor, had had his hearing, had his notice, and an opportunity to be heard by the committee, and an opportunity to be heard in his defense before the association. But I do not read this as meaning that the association shall rehear the evidence upon which the committee's report was based. They have the right, as any legislative body has, to act upon the report of the committee which has been appointed according to the rules of the order—the society—and they can act with or without information. They can vote blindly, if they please, for it, or they can insist on further information, but it is for them

to say whether they will accept or reject the report."

We think nothing further need be said. The *De Yturbe* case is controlling, and it is supported by the weight of authority.

It follows that the demurrer to the answer was properly overruled, and, therefore, the order of the court below denying the prayer for the writ of peremptory mandamus and dismissing the petition must be affirmed, with costs, and it is so ordered.

#### Recent Important Bankruptcy Decisions.

Reported in the December Number American Bankruptcy Reports, Vol. 14.

**Franchise Tax—New Jersey Statute—Section 64a of Bankruptcy Act.**—A franchise or license fee imposed by the State of New Jersey upon corporations organized under its laws is not a tax, and under section 64a of the Bankruptcy Act, such franchise tax or license fee is not entitled to priority in the administration of the estate.—*Matter of Cosmopolitan Power Co.*, 14 Am. B. R., 604.

**Selection of Trustee—Creditors—Combination of.**—A combination of creditors for the control of judicial proceedings in their own interests, as distinguished from the interests of the general creditors, is clearly against public policy; as where certain creditors of several "allied" corporations, prior to bankruptcy proceedings, assigned, for value, their claims against the bankrupts, in trust, to a so-called committee; and the committee should not be allowed to cast more than one vote for trustee instead of a vote for each claim represented by them.—*In re E. T. Kenney & Co.*, 14 Am. B. R., 611.

**Bankrupt—Production of Books and Records—Incriminating Evidence.**—An order directing a bankrupt to produce his books and records before the referee should be complied with, where the bankrupt alleges that they contain incriminating evidence, the question as to whether his plea of constitutional privilege is well founded being determined by the court or referee; and if the plea is well founded in fact, an order can be made to protect the bankrupt from the discovery of such evidence, and if possible to enable the trustee to obtain other necessary information.—*Matter of Hark Bros.*, 14 Am. B. R., 624.

**Contracts—Conditional Sale—Lease—Validity.**—Where, under a so-called lease, the "lessor" delivers a typesetting machine to the "lessee," the arrangement being for the payment of a "rental" for a term of three years, the contract to be terminated at option of "lessor" upon failure to pay any instalment of rent, and at the expiration of such term the "lessee" to have right to retain the machine by making a certain additional payment, the transaction was a conditional sale under the Conditional Sale Statute of Ohio, and void as against the trustee in bankruptcy of the "lessee" unless filed as provided by said statute.—*In re Sheets Printing & Mfg. Co.*, 14 Am. B. R., 668.

**Assets—Concealment of—Summary Proceedings Against an Attorney—Plenary Suit.**—Where an attorney not only advised and assisted in the transfer of property of a bankrupt prior to the filing of the petition, to prefer one individual, but also advised and assisted in carrying out a general scheme for the concealment of most of the rest of the property and for preventing its application to the payment of the bankrupt's debts, a peremptory order in summary proceedings, to compel the return of the property or money to the trustee, was not justified, where the original receipt of the property is denied by the attorney and the only proof that it was ever received was the mere oath of interested witnesses, unsupported by corroborative or documentary proof; and a plenary suit would have been the proper proceeding.—*Matter of Gilroy & Bloomfield*, 14 Am. B. R., 627.

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### FINANCIAL.

#### Second Annual Report of the Pueblo Mining Company.

We, the undersigned president and a majority of the trustees of the above-named company, make this our second annual report, under and in pursuance of the provisions of section 617, of the code of law for the District of Columbia, under which law the said company was incorporated. The amount of capital of said company is \$3,000,000, consisting of 3,000,000 shares, of the par value of \$1 each. The number of shares issued, 2,575,008. There are no debts.

Witness our hands this 9th day of January, A. D. 1906.

CHARLES T. MCCOY,  
*President.*

CHARLES T. MCCOY,  
JNO. T. MCCOY,  
W. H. ROHRER,  
M. H. RAMAGE,  
JNO. R. STONE,  
C. C. CLEMENTS,  
*Trustees.*

CITY OF WASHINGTON,  
District of Columbia. } *as.*

Charles T. McCoy, being first duly sworn according to law, deposes and says: That he is president of the above-named corporation; that he has read the foregoing, its second annual report, and knows the contents thereof, and that the same is true to the best of his knowledge, information, and belief.

[Seal]

CHARLES T. MCCOY.

Subscribed and sworn to before me this 9th day of January, A. D. 1906.

2-11

WM. H. BADEN, *Notary Public*, D. C.

### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

## Legal Notices.

### FIRST INSERTION.

Chas. W. Boyle, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Michael F. Griffin, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of January, 1906. MARGARET E. GRIFFIN, 305 C st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,353. Adm'n. [Seal.] 2-81

Geo. H. White, Solicitor

In the Supreme Court of the District of Columbia.

Isabella McLane v. Cary P. McLane, Cornelia Lindsey.  
No. 25,871. Equity Docket, No. —.

The object of this suit is to obtain a divorce from the bonds of matrimony now existing between the plaintiff and the defendant, Cary P. McLane, upon statutory grounds, provided a copy of this order be published once a week for three consecutive weeks in The Washington Law Reporter and The Washington Record. On motion of the complainant, it is, this 9th day of January, Anno Domini 1906, ordered that the defendants cause their appearance to be entered herein on or before the 40th day, exclusive of Sundays and legal holidays, occurring after the first day of publication of this order; otherwise this cause will be proceeded with as in case of default. By the court. THOS. H. ANDERSON, Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 2-81

[Seal] this cause will be proceeded with as in case of default. By the court. THOS. H. ANDERSON, Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 2-81

Blair & Thom, Solicitors

In the Supreme Court of the District of Columbia,  
Holding an Equity Court.

George B. Read, Complainant, v. Gertrude R. Randolph et al., Defendants.

Equity No. 25,910.

The object of this suit is to appoint a trustee in the place of William Thompson Harris, now deceased, to carry out the trusts contained in the last will and testament of Mary E. Read, to sell the real estate belonging to the said Mary E. Read, and to distribute the proceeds of the same as directed by her said will. Upon motion of the complainant, it is, this 10th day of January, 1906, ordered that the defendants, Mary A. Bates, Anna T. Harris, Emily T. Harris, Catherine H. Dodge, Rita Howard, and Elizabeth Howard, and each of them, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order to be published once a week for three consecutive weeks in The Washington Law Reporter and The Washington Post. By the Court. THOS. H. ANDERSON, Justice.

A true copy. Attest: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 2-81

The Law Reporter Printing Company's office is now the cleanest, most comfortable and best conducted one in the city of Washington, having a head for every department of the business. It will be kept so, in order that the public may be expeditiously served.



**Legal Notices.**

**Henry S. Matthews, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Victoria E. Leetch, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 5th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 5th day of January, 1906. **WILLIAM A. LEETCH, 1907 81st st. N. W.; FRANK P. LEETCH, 1698 81st st. N. W.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,877. Administration. [Seal.]** 2-St

**Walter A. Johnston, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of James F. Peerce, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of January, 1906. **REBECCA DELANEY HOOE, 1020 6th st. S. W.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,283. Administration. [Seal.]** 2-St

**Millan & Smith, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Eleanor N. T. Meeds, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of December, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of January, 1906. **BENJAMIN N. MEEDS, 1010 Pa. ave. S. E.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,357. Adm. [Seal.]** 2-St

Filed January 9, 1906, J. R. Young, Clerk.

**W. H. Linkins, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**

**Patrick O'Toole v. George Thompson et als.**  
**In Equity, No. 25,908.**

The object of this suit is to perfect complainant's title to original lot 16, square eighty-eight (88), in the city of Washington, District of Columbia. On motion of the complainant, by his solicitor, William H. Linkins, it is, this 9th day of January, A. D. 1906, ordered that the defendants, George Thompson, Samuel Smoot, William Thompson, trustee, James Wilson, and Thomas Wilson, and the unknown heirs, devisees, grantees, and alienees, both immediate and mediate, and the unknown heirs of such devisees, grantees, or alienees, or persons claiming under, by, or through any parties who might be so described, of all said above-named parties, and also of Andrew Sullivan, deceased, and the grantees or alienees of Ann Clephane, deceased, either immediate or mediate, or the heirs of such grantees or alienees, or any parties who claim under, by, or through any parties who might be so described, cause their appearance to be entered herein on or before the first rule day occurring three months after the first publication of this order; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published in Washington Law Reporter and The Washington Times for three successive months prior to said return day and in the following manner, once a week for three successive weeks during the first month and twice a month during each of the two succeeding months.

[Seal] By the court. **THOS. H. ANDERSON, Justice.**  
 A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk.

Jan. 12, 19, 26; Feb. 9, 16; Mar. 9, 16

**Legal Notices.**

**Jas. H. Taylor, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Margaret A. Wetzel, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of January, 1906. **JAMES H. TAYLOR, 1419 G st. N. W.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,978. Administration. [Seal.]** 2-St

Filed January 9, 1906, J. R. Young, Clerk.

**Raum & Richardson, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Octavia Robey et al. v. Octavia V. Robey et al.**  
**In Equity, No. 25,571.**

John Raum and Albert L. Richardson, trustees, having reported an offer by Curry E. Thrift to purchase for \$700.00 cash the property described in this proceeding, to wit: Lot 274 in Uniontown, in the County of Washington, in the District of Columbia, it is, this 8th day of January, 1906, ordered that said offer be, and hereby is, accepted, and the said sale be, and hereby is, ratified and confirmed, unless cause to the contrary be shown on or before the 15th day of February, 1906. Provided that a copy of this order be published in the Washington Law Reporter and Washington Times once a week for three successive weeks, the first publication to occur at least 80 days before the said 15th day of February, 1906. **THOS. H. ANDERSON, Justice.** A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 2-St

**E. H. Thomas and James Francis Smith, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding a District Court.**

**In the Matter of the Widening and Extension of a minor street (Brown street), from Thirty-second street to Valley street, in Square No. 1280, in the District of Columbia. No. 675. District Court Doc. 2.**

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of an act of Congress approved February 23, 1905, entitled "An Act to amend chapter fifty-five of an act entitled 'An Act to establish a Code of Law for the District of Columbia,'" have filed a petition in this court praying the condemnation of the land necessary for the widening and extension of a minor street (Brown street), from Thirty-second street to Valley street, in square No. 1280, in the District of Columbia, as shown on a plat or map filed with the said petition as part thereof, and praying, also, that a jury of five judicious, disinterested men, not related to any person interested in these proceedings and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States marshal for the District of Columbia to assess the damages each owner of land to be taken may sustain by reason of the widening and extension of the aforesaid minor street and the condemnation of the land necessary for the purposes thereof, and to assess the benefits resulting therefrom, including the expenses of these proceedings, as provided in and by the aforesaid act of Congress. It is, by the court, this 11th day of January, A. D. 1906, ordered, that all persons having any interest in these proceedings be, and they are hereby, warned and commanded to appear in this court on or before the 25th day of January, A. D. 1906, at 10 o'clock A. M., and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be empaneled and sworn herein; and it is further ordered, that a copy of this notice and order be published once in The Washington Law Reporter and once in The Washington Evening Star, The Washington Post, and The Washington Times, newspapers published in the said District, before the said 25th day of January, A. D. 1906. It is further ordered, that a copy of this notice and order be served by the United States marshal for the said District, or his deputies, upon such of the owners of the fee of the land to be condemned herein as may be found by the said marshal or his deputies within the District of Columbia before the said 25th day of January, A. D. 1906.

[Seal] By the court. **ASHLEY M. GOULD, Justice.**  
 A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 2-It



**Legal Notices.****M. F. Mangan, Solicitor**

**In the Supreme Court of the District of Columbia.**  
**Standard Sewing Machine Company, a Corporation,**  
**Complainant, v. Samuel S. Adams, Assignee, Ernest**  
**Burgdorf, Beila A. Hollister, Annie W. Hollister,**  
**William J. Johnston, George T. Keen, and John J.**  
**Hollister, Defendants. Equity No. 12,976.**

Chapin Brown, receiver appointed in this cause, having reported that he has received an offer from John P. Earnest of twenty-five (\$25) dollars for the one-third undivided interest of John J. Hollister in lots 131, 132, 133, and 134, in Chas. E. Barnes' subdivision of lots 90 to 93 and 96 to 101 in Thos. E. Waggaman's subdivision of part of "Long Meadows," recorded in county book No. 6, page 27, in the office of the surveyor of the District of Columbia, it is, by the Court, this 8th day of January, A. D. 1906, ordered, that the said offer to purchase said undivided interest in said property be accepted and the sale of said undivided interest in said property be ratified and confirmed to said Earnest, and that the said receiver be authorized and empowered to convey the said undivided interest in the above described property, by deed, to the said purchaser, unless cause to the contrary be shown on or before the 9th day of February, A. D. 1906. Provided that a copy of this order be published in The Washington Law Reporter once a week for each of three successive weeks before said last [Seal] named day. THOS. H. ANDERSON, Justice.  
 A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 2-3t

**H. T. Winfield, Attorney**

**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**Estate of Daniel R. A. Lyons, Deceased.**  
**Administration, No. 13,333. New Series.**

**ORDER OF PUBLICATION.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Thomas M. Robinson, it is ordered this 4th day of January, A. D. 1906, that notice be and hereby is given to George Lyons, a non-resident of the District of Columbia, and to all others concerned, to appear in said court on Monday, the 12th day of February, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return date herein mentioned, the first publication to be not less than thirty days before [Seal] said return date. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. 2-3t

**Ivan Heldeman, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Mary Shelton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of January, A. D. 1907; otherwise they may be by law excluded from all benefit of said estate. Given under my hand this 5th day of January, 1906. GEORGE BURGESS, Stewart Bldg., 6 & D sts. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,546. Administration. [Seal.] 2-3t

**SECOND INSERTION.**

**Henry G. Thomas and James W. Beller, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Elphonzo Youngs, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of December, A. D. 1906; otherwise they may be by law be excluded from all benefit of said estate. Given under my hand this 2d day of January, 1906. AMELIA L. YOUNGS, 1800 10th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,359. Administration. [Seal.] 1-3t

**Legal Notices.****R. M. Parker, Attorney**

**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**In Re Estate of Nancy D. Bishop, Deceased.**  
**No. 10,732.**

Upon consideration of the report of Samuel S. Yoder, executor under the will of Nancy D. Bishop, reporting that he has received an offer from Sophia A. Bishop, a legatee under said will, agreeing to accept the sum of \$3,000.00, in lieu of the annual legacy of \$600.00 to her, during her natural life, payable in monthly instalments, as provided in said will and as a full release and discharge of said legacy, it is, this 2d day of January, 1906, ordered that a rule be issued on all the parties in interest, to show cause on or before the 27th day of January, 1906, why the prayer of the petition should not be granted. Provided that a copy of this order be published once a week for three successive weeks in The Washington Law Reporter before said last mentioned date, and that a copy of said order be mailed to the postoffice address of all the parties mentioned [Seal] in said will and in the petition for probate thereof. WENDELL P. STAFFORD, Justice.  
 A true copy. Attest: James Tanner, Register of Wills. 1-3t

**Wolf & Rosenberg, Attorneys**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William Henry Harrison, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 2d day of January, 1906. LUCY A. HARRISON, 1209 R st. N. W., MAURICE D. ROSENBERG, Jenifer Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,356. Administration. [Seal.] 1-3t

**Barnard & Johnson, Attorneys**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Emma Stahl, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 3d day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 3d day of January, 1906. GUY H. JOHNSON, Columbian Bldg.; JOHN SCRIVENER, 319 4½ st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,332. Administration. [Seal.] 1-3t

**Alex. H. Bell, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of John G. Barthel, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3d day of January, 1906. KATHARINE G. BARTHEL, 221 John Marshall Place. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,346. Administration. [Seal.] 1-3t

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at half past five, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W.

Justice blanks of every description for sale at this office.

**Legal Notices.**

**W. C. Martin, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Robert H. Daggs, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of December, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of December, 1905. WM. J. HOWARD, 100 Mass. ave. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,235. Administration. [Seal.] 1-3t

**Fred McKee, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Annie E. McKee, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of January, 1906. JAMES W. MCKEE, 1818 North Capitol st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,368. Administration. [Seal.] 1-3t

**Michael J. Keane, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Cornelius H. Naughton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of January, 1906. MARY A. NAUGHTON, 1926 14th st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,355. Administration. [Seal.] 1-3t

**F. Elwood Pratt and Jesse H. Wilson, Jr., Solicitors**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**Patrick Fealy v. Anna Dore et al.**  
**Eq. No. 25,509.**

Upon consideration of the report filed herein by F. Elwood Pratt, trustee, showing that he has sold, at public auction, sub-lot 33, in square 335, to Jane E. Murphy, for the sum of \$3,750, it is this 29th day of December, 1906, ordered by the court that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 29th day of January, 1907. Provided that this order be published once a week for three successive weeks in The Washington Law Reporter before said last mentioned date. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 1-3t

**W. J. Lambert, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Special Term for Equity Business.**  
**N. Nora Hyman v. John B. Hyman et al.**  
**Equity 25,297.**

Upon consideration of the report of Wilton J. Lambert and William C. Martin, trustees, filed herein, it is, this 2d day of January, A. D. 1906, ordered that said trustees be, and they hereby are, authorized to accept the offer of Terrence J. McMahon to purchase for the sum of \$1,675 the west one-half of lot No. 55, in square 209, in the city of Washington, District of Columbia, being the property decreed to be sold in the above-entitled cause; and, further, that said sale of said lot be ratified and confirmed as reported, unless cause to the contrary be shown on or before the 5th day of February, A. D. 1906. Provided a copy of this order be published in The Washington Law Reporter and The Washington Times once a week for three successive weeks before said day. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. 1-3t

**Legal Notices.**

**Charles J. Murphy, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**Estate of Mary Sullivan, Deceased.**  
**No. 13,335. Administration.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Edwin E. Pillsbury, it is ordered this 29th day of December, A. D. 1905, that notice be and hereby is given to Michael Sullivan, Patrick Sullivan, and Eugene Sullivan, and to all others concerned, to appear in said court on Monday, the 5th day of February, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day. JOB BARNARD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 1-3t

**Jos. H. Stewart, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**John H. Burke, Complainant, v. The Unknown Heirs**  
**at Law of Emanuel Garner and Mary Nix, Defendants.**  
**Equity No. 25,778.**

The object of this suit is to establish of record the title of complainant in fee simple by adverse possession against the unknown heirs at law of Emanuel Garner and Mary Nix, their alienees and devisees, to that parcel of land described as the east one-half of lot seven in block twenty-one in Howard University subdivision of the farm of the late John A. Smith, known as Effingham Place, in the county of Washington, as the same appears of record in the office of the surveyor of the District of Columbia, in Liber District 1, folio 78½, and, it appearing to the court, upon good cause shown by affidavit filed herein, that the publication herein provided for will be sufficient, it is, on motion of the complainant, by his solicitor, Joseph H. Stewart, this 2d day of January, 1906, ordered that the defendants, the unknown heirs at law of Emanuel Garner and Mary Nix, their alienees and devisees, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that this order be published in The Washington Law Reporter and The Record, once a week for three consecutive weeks. By the Court: THOS. H. ANDERSON, Associate Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. 1-3t

**Paul E. Johnson, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Daniel Murphy, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of January, 1906. CECILIA V. MURPHY, 10 I st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,371. Administration. [Seal.] 1-3t

**Henry S. Matthews, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of John Leetch, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 2d day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 2d day of January, 1906. WILLIAM A. LEETCH, 1697 81st st. N. W.; FRANK P. LEETCH, 1696 81st st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,366. Administration. [Seal.] 1-3t

**Legal Notices.****L. Cabell Williamson, Solicitor**

**In the Supreme Court of the District of Columbia.**  
**L. Cabell Williamson, Mary E. Fitch, Trustees,**  
**Complainants, v. the Unknown Heirs, Alienees, or**  
**Devises of John Davis, Henry Buford, and John**  
**H. Eaton, Defendants. Equity No. 25,881.**

The object of this suit is to perfect complainants' title to lot numbered and lettered "A" in J. B. Hollidge's subdivision of lots, in square numbered five hundred ten (510) in the city of Washington, District of Columbia, as said subdivision is of record in Book C. H. B., page 143, of the records of the office of the surveyor of said District. On motion of the complainants, it is, this 4th day of January, A. D. 1906, ordered that the defendants, the unknown heirs, alienees, or devisees of each of the following named persons, to wit: John Davis, Henry Buford, and John H. Eaton, cause their appearance to be entered herein, on or before the first rule day occurring after three months from the day of the first publication of this order; otherwise the cause will be proceeded with as in cases of default. Provided a copy of this order be published for three months, once a week for three successive weeks for the first month and twice a month for each of the two succeeding months, in The [Seal] Washington Law Reporter and Washington Post. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. Jan 5-12-19; feb 2-9; mar 2-9

**Jos. H. Stewart, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Rose Simms, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 29th day of December, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of January, 1906. JOSEPH H. STEWART, 605 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,349. Administration. [Seal.] 1-3t

**Chas. W. Darr, Richard A. Curtin, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of William Santry (also known as William Sauntry), late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 29th day of December, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of January, 1906. CHARLES W. DARR, 707 G st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,278. Administration. [Seal.] 1-3t

**THIRD INSERTION.****Wilton J. Lambert, Attorney**

**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**In the Matter of the Estate of Margaret Love Skerrett,**  
**Deceased. Administration, No. 13,337.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for the probate of the last will and testament of said deceased, and for letters testamentary on said estate, by David Milne and Frederick William Matteson, the executors named in said will, it is, this 27th day of December, 1905, ordered that notice be and the same hereby is given to Robert G. Skerrett, and all others concerned, to appear in said court on the 30th day of January, 1906, at 10 o'clock A. M., to show cause why said application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each week for three consecutive weeks before the return day herein mentioned, the first publication to be not less than thirty (30) days before said return day. [Seal] By the Court: THOS. H. ANDERSON, Justice. A true copy. Attest: James Tanner, Register of Wills. 52-3t

**Legal Notices.**

**Walter C. Clephane, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Henry O. Towles, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of December, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of December, 1905. FANNIE E. TOWLES, 1124 12th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,348. Administration. [Seal.] 52-3t

**Lester and Price, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Patrick McCormick, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of December, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of December, 1905. JOHN B. GEIER, 1113 7th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,253. Administration. [Seal.] 52-3t

**George F. Collins, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Elizabeth A. Rawlings, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of December, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of December, 1905. JAMES S. RAWLINGS, 1207 T st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,019. Admin. [Seal.] 52-3t

**FIFTH INSERTION.**

**J. J. Darlington, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Alexander B. Hagner et al. v. John H. Walter,**  
**Trustee, et al. No. 25,589. Eq. Doc. 57.**

**ORDER.**  
 The object of this suit is to perfect complainants' title to part of lot 13, square 141, beginning for same at the northeast corner of said lot 13, running thence south 133 feet, thence west 25 feet 3 3/4 inches, thence north 133 feet, thence east 25 feet 3 3/4 inches, to the place of beginning. On motion of complainants, it is, this 29th day of November, A. D. 1905, ordered that the defendants James Westcott, Augustus Westcott, Ann Eliza Barnard, and William Cary McHenry, John McHenry, Ellen Keyser, and Sophia Stewart, trustees, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs, devisees, and alienees of each of the following named persons, to wit: Julius Forrest, trustee, John Brown, John Innez Clark, — Brown, — Ives (late partners trading as Brown and Ives), George Gibbs, Walter Channing (late partners trading as Gibbs and Channing), Samuel Elam, William Cook, James McHenry, John McHenry, Anna Boyd, Ramsey McHenry, Robert Oliver, William Hindman, James Hindman, James Stott, Sallie Stott, Samuel Stott, Charles Stott, Lucy Stott, Mary Stott, Elizabeth Stott, James Stott, Junior, and Sarah Westcott, cause their appearance to be entered herein on or before the rule day occurring after three months from the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks during the month following the first publication of this order, and twice a month during the ensuing month, and in The Washington Post twice a month for two months, good cause therefor having been shown. [Seal] WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Lattimer, Asst. Clerk. dec 1, 8, 15; Jan 5, 12

**Legal Notices.**

**Harry G. Kimball, Solicitor**  
In the Supreme Court of the District of Columbia.  
**Allice M. Peck, Complainant, v. The Unknown Heirs, Allenees, and Devisees of Appelona Whitehair, Deceased, et al., Defendants.**

In Equity. No. 25,782.

The object of this suit is to establish of record the title in fee simple of the complainant to lot numbered twenty (20) in Babcock's subdivision of original lots eight (8), nine (9), and ten (10) in square one hundred and three (108) in the city of Washington, District of Columbia. On motion of the complainant, by her solicitor, Harry G. Kimball, it is, this 9th day of November, A. D. 1906, ordered that the defendants, the unknown heirs, allenees, and devisees of Appelona Whitehair, deceased, and the unknown heirs, allenees, and devisees of Justinian Mayberry, deceased, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. This order shall be published twice a month during said three months in The Washington Law Reporter and in The Washington Times.

[Seal] By the Court: THOS. H. ANDERSON, Justice. True copy. Test: John R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. nov 10-17, dec 8-15, jan 12-19

**SIXTH INSERTION.**

**W. Spencer Armstrong, Solicitor**  
In the Supreme Court of the District of Columbia.  
**Elizabeth Sutton and William H. Fearson v. The Unknown Heirs, Devisees, and Allenees of George Mason and Others.** No. 25,700. Equity Docket No. 57.

The object of this suit is to establish complainants' title in fee simple, by adverse possession, in and to lot 17, north 20 ft. front on 19th st. by the full depth thereof, of original lot 12, in sq. 106, in Washington, D. C., improved by premises No. 913, 19th st. N. W. The defendants to this suit are the unknown heirs, devisees, and allenees of George Mason, of William Mason, of A. E. Grimes, and of Elizabeth Hooe, all deceased. On motion of the complainants, by W. Spencer Armstrong, their solicitor, it is this 1st day of November, 1906, ordered that the defendants cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. This order shall be published twice a month during said three months in the Washington Law Reporter and in the Washington Times.

[Seal] By the court: THOS. H. ANDERSON, Justice. True copy. Test: John R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk.

nov 3-10; dec 1-8; jan 5-12

**SEVENTH INSERTION.**

**W. Spencer Armstrong, Solicitor**  
In the Supreme Court of the District of Columbia.  
**D. H. Roland Drury v. Minnie Fuller and Others.** No. 25,660. Equity Docket No. 57.

The object of this suit is to establish complainant's title in fee simple by adverse possession in and to lot 17, in Emily Fuller's subdivision of lots in square 60, in Washington, D. C., as said subdivision is recorded in the surveyor's office in Book H. D. C., page 40. The defendants to this suit are Minnie Fuller (if living), and the unknown heirs, devisees and allenees of Minnie Fuller (if deceased), of Andrew Schofield, of Robert Leckie, of Ruth Fuller, of Calhoun Clark, and of Sarah F. Fitzgerald. On motion of complainant, by W. Spencer Armstrong, his solicitor, it is this 1st day of November, 1906, ordered that said defendant Minnie Fuller cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; and that the other defendants cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. This order to be published once a week for three successive weeks during the first month, and thereafter twice a month for two months, in The Washington Law Reporter and in The Washington Times.

[Seal] By the Court: THOS. H. ANDERSON, Justice. True copy. Test: John R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk.

nov 3-10-17; dec 1-8; jan 5-12

Justice blanks of every description for sale at this office.

**Legal Notices.**

**Ellwood O. Wagenhorst, Solicitor**

In the Supreme Court of the District of Columbia.  
**Mary Sherman McCallum, Rebecca Alexander, Complainants, v. Mary A. Ellis, Susan E. Hedlan, The Unknown Heirs at Law of Susan Decatur, Defendants.** Equity, No. 25,785.

The object of this suit is to establish the titles by adverse possession of the complainants to the south 35 feet of original lot 18 of square 198 in the city of Washington, District of Columbia. On motion of the complainants, by their solicitor, it is, by the court, this 7th day of November, A. D. 1906, ordered that the defendant, Susan E. Hedlan, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause, as to her, will be proceeded with as in case of default. And, it is, by the court, further ordered, this 7th day of November, A. D. 1906, that the unknown heirs at law of Susan Decatur, and each of them, cause their appearance to be entered herein on or before the first rule day occurring three months next after the date of the first publication of this order; otherwise the cause, as to them, will be proceeded with as in case of default. This order, before the appearance days named for the defendant, Susan E. Hedlan, and for the unknown heirs at law of Susan Decatur, respectively, shall be published once a week for four successive weeks, and twice a month for three successive months, in The Washington Law Reporter and The Washington Evening Star. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk.

nov. 10, 17, 24; dec. 1, 15; jan. 5, 12; feb. 2, 9

**J. J. Darlington, Solicitor**

In the Supreme Court of the District of Columbia.  
**Alexander B. Hagner, Complainant, v. John H. Walter, Trustee, et al., Defendants.**

No. 25,588. Eq. Doc. 57.

The object of this suit is to perfect complainant's title to parts of lots 9 and 13, square 141, Washington, D. C., beginning for said part of lot 13 at a point in the south line of north H street, distant 25 feet 3 1/2 inches west from the northeast corner of lot 13, running thence west on said south line of H street 40 feet 3 1/2 inches; thence south 133 feet; thence east 65 feet 7 inches; thence north 50 feet; thence west 25 feet 3 1/2 inches; thence north 133 feet to the place of beginning. And beginning for said part of lot 9 at the northeast corner of said lot, running thence south 51 feet 6 inches; thence west 20 feet; thence north 51 feet 6 inches; thence east 20 feet, to the place of beginning. On motion of complainant, it is, this 9th day of November, A. D. 1906, ordered that the defendants, James Westcott, Augustus Westcott, Samuel Westcott, Wilkin Westcott, Nathan Westcott, Mary Westcott, Katherine Westcott, Ann Eliza Barnard, and William Cary McHenry, John McHenry, Ellen Keyser, and Sophia Stewart, trustees, cause their appearance to be entered herein on or before the fortieth day exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; and that the defendants, the unknown heirs, devisees, and allenees of each of the following-named persons, to wit: Julius Forrest, trustee, John Brown, John Innes Clark, — Brown, — Ives (late partners trading as Brown and Ives), George Gibbs, Walter Channing (late partners trading as Gibbs and Channing), Samuel Elam, William Cook, James McHenry, John McHenry, Anna Boyd, Ramsey McHenry, Robert Oliver, William Hindman, James Hindman, James Stott, Sallie Stott, Samuel Stott, Charles Stott, Lucy Stott, Mary Stott, Elizabeth Stott, James Stott, junior, and Sarah Westcott, cause their appearance to be entered herein on or before the rule day occurring after three months from the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published for three months, once a week for three successive weeks, during the month following the publication of this order, and twice a month for each of the two succeeding months, in The Washington Law Reporter and Washington Post.

[Seal] WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk.

nov 10-17-24; dec 1-8; jan 5-12

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## THIS WEEK'S DECISIONS BY THE COURT OF APPEALS.

Equity Practice; Cross-Bills; Service of Subpoena on  
Defendant's Solicitor.

In *American Graphophone Company v. Smith*, the appeal was one specially allowed from an order of the court below denying a motion by the appellant to quash the service of a subpoena ad respondendum, served upon its solicitor, requiring it to appear and answer the cross-bill of the appellee. The subpoena had been served by order of the justice holding the equity court, on motion of the appellee and due notice to appellant's solicitors. The single question presented by the appeal was whether the service of the subpoena upon the solicitor of appellant was sufficient to require the defendant in the cross-bill to appear and answer the same. On behalf of the appellant it was contended that the cross-bill was not defensive, but contain new matter which ought to be brought in by an independent bill, and that for that reason the service should be set aside. The Court of Appeals, however, in an opinion by Mr. Justice Barnard, who sat with the court in the place of Mr. Justice McComas, holds that the cross-bill was a proper one, so far as the question before the court, i. e., the service of the subpoena on the solicitors of the defendant therein, was concerned; and affirms the order ap-pealed from.

## Police Regulations; Vehicles for Hire; Loitering on Streets.

In *Gassenheimer v. District of Columbia*, the plaintiff in error was convicted in the Police Court upon an information charging him with the violation of a police regulation prohibiting vehicles for hire from stopping or loitering upon the streets except at regular cab stands, and from soliciting passengers upon the streets, etc. The court holds that automobiles are vehicles, within the meaning of the regulation, and that the evidence adduced was sufficient to support the conviction. The judgment is therefore affirmed in an opinion by Mr. Chief Justice Shepard.

## Contracts with United States—Bond of Contractors—Materials Supplied to Subcontractor.

We report in this issue the decision of the Supreme Court of the United States in the case of *United States, use of Hill et al., v. The American Surety Company*. The decision is one of especial interest to persons having contracts with the United States for the construction or repair of public buildings or works, and the sureties on bonds given by them, as well as to persons furnishing labor or materials in the prosecution of the work under the contract. The precise question involved was whether the provision of the act of Congress of August 13, 1894 (28 Stat., 280), requiring that such bonds shall contain an additional obligation for prompt payment to all persons supplying the contractor with labor or materials in the prosecution of the work under the contract, protected a party who supplied labor and materials not directly to the contractor, but to a subcontractor with whom the principal contractor had made a contract for certain portions of the work. On behalf of the surety it was contended that the bond is to be construed strictly and a recovery limited to those only who furnished labor or materials directly to the contractor. This contention is denied by the Supreme Court, and it is held that all persons furnishing labor or materials in the prosecution of the work, whether directly to the contractor, or to a subcontractor to whom the contractor has sublet a portion of the work, are protected by the bond. The construction thus given the statute is a very liberal one, and makes the remedy afforded by it even more efficacious than that given under the mechanic's lien laws in the case of private contracts.

A police officer who kills a person whom he is attempting to arrest is held, in *State v. Coleman* (Mo.), 89 L. R. A., 381, to be guilty of a criminal offense if he uses more force than is reasonably necessary to effect his purpose.

## Court of Appeals of the District of Columbia.

THE WASHINGTON, ALEXANDRIA, AND  
MT. VERNON RAILWAY COMPANY,  
APPELLANT,

v.

## AUSTIN CHAPMAN.

CARRIERS; INJURY TO PASSENGER; NEGLIGENCE;  
GOING UPON PLATFORM OF MOVING CAR IN ORDER  
TO ALIGHT WHEN IT STOPS; BURDEN OF PROOF;  
RES IPSA LOQUITUR.

1. It is not negligence per se for a passenger on a railway car, when it approaches a station and has slowed down preparatory to coming to a full stop, to leave his seat and go out upon the platform in order to alight when it stops.
2. In an action for personal injuries, the declaration alleged that as the car approached a station and had slowed down so as to make it reasonably prudent for him to go upon the platform for the purpose of alighting when it stopped, plaintiff arose from his seat in the car and went out upon the platform for such purpose, but that, by reason of defendant's negligence, the car, instead of coming to a full stop as it should have done, made a violent lurch forward, whereby plaintiff was thrown from the platform to the ground, and injured. *Held*, that this was not an admission of contributory negligence on the part of the plaintiff sufficient on its face to defeat a recovery, and that a demurrer to the declaration on that ground was properly overruled.
3. In passenger cases a prima facie case of negligence on the part of the defendant is made by showing that the accident causing the injury occurred while the plaintiff was a passenger; and the burden rests upon the defendant to explain the cause of the accident, and to show, if that be the defense, that the plaintiff was negligent and that such negligence caused or contributed to the injury.
4. *Held*, in the present case, that the rulings of the trial court upon prayers presented were proper; that the charge was a just and fair statement of the law of the case, and that the case was properly submitted to the jury.

No. 1567. Decided January 4, 1906.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 46,554, entered upon a verdict for plaintiff in an action for personal injuries. Affirmed.

Mr. A. A. Hoehling, jr., for the appellant.

Mr. Hayden Johnson, Mr. J. McD. Carrington, and Mr. Campbell Carrington for the appellee.

Mr. Justice DUELL delivered the opinion of the Court:

This is an appeal from a judgment of the Supreme Court of the District of Columbia in an action brought by the appellee against the appellant for personal injuries received by him while a passenger on appellant's train.

The declaration sets forth that the defendant, a corporate common carrier, operating an electric railway line between Washington and Alexandria, undertook to transport the plaintiff on the 11th day of December, 1902, from Alexandria to Addison, a station on its line, for a stated sum, and to stop its train at that station so as to enable him to safely alight; that in pursuance of its undertaking it became its duty to safely carry and land him at the agreed point; that while said car was approaching said station and had sufficiently slowed down in its speed as to make it reasonably prudent under all the circumstances for plaintiff to leave his seat and go out upon the platform for the purpose of alighting from said car as soon as the same should

come to a full stop, the plaintiff arose from his seat in said car and went out upon the platform thereof for the purpose of alighting as aforesaid, but the defendant, its agents and employees, so negligently conducted and managed said car that instead of coming to a full stop, as it should have done, it suddenly and with a violent lurch or jerk started forward at great speed, whereby the plaintiff, before he had made any attempt to alight, and without any negligence on his part, was violently thrown from said platform to the ground; and concludes with a statement of injuries received by him, including a broken leg, the expense to which he was put, and claims damages in the sum of \$10,000.

This declaration was demurred to as bad in substance; the special grounds urged being that it affirmatively appeared that the claimed injury was caused by plaintiff's neglect and want of care; that it did not appear that the alleged injury was caused by any act of neglect of defendant; that it failed to set forth sufficient in law to charge defendant with any breach of duty, and that it failed to state a cause of action against defendant.

The demurrer was overruled. As the failure to sustain the demurrer is set forth as the first error, it may be well to consider it at this time. It is here urged that, though a plaintiff may aver that he was not guilty of contributory negligence, it will not avail him if the declaration show negligence; that the question of contributory negligence may be tested by demurrer to the declaration; and that passengers who voluntarily place themselves in dangerous positions must assume the attendant risks and danger. Admitting the correctness of these propositions, it comes down to the single question whether the plaintiff's statement that, as the car was approaching the station and had slowed down so as to make it reasonably prudent for him to leave his seat and go out upon the platform for the purpose of alighting as soon as the car should come to a full stop, is an averment constituting an admission of contributory negligence sufficient on its face to bar a recovery. It is contended by appellant that a passenger has no right to go upon the platform of a railway car while it is in motion. The authorities cited by him to sustain the proposition are not in harmony with the decisions of this court, and are, in the main, overruled by later cases. *Adams v. Washington and Georgetown R. R. Co.*, 9 App. D. C., 26; 24 Wash. Law Rep., 364. A well-known text-writer has said:

"It is not negligence per se for a passenger to ride upon the platform of a railway car . . . nor for a passenger in a railway car, when it approaches a station, to leave his seat and go out of the door of the car, in order to alight when it stops." *Beach on Contributory Negligence*, secs. 149, 149A (3d ed.). The railways—and especially those using electricity as the motive power—permit passengers to ride on the platforms, and the "step lively, please," of their conductors incites passengers to hasten to alight. All is in keeping with the rush of modern life. It is well settled in this jurisdiction that, "as a general proposition, a question of negligence is a question of fact, and must be submitted to the jury." *Railway Co. v. Grant*,



11 App. D. C., 114; 25 Wash. Law Rep., 342. We do not think the declaration was demurrable on any of the grounds urged by appellant, and that the case was one calling for evidence before plaintiff could be held guilty of contributory negligence.

After the demurrer was overruled the defendant filed pleas to the declaration and issue was joined. On the trial the plaintiff gave evidence tending to prove the material allegations of the declaration. It was to the effect that plaintiff, who had been employed for about fifteen months in the Potomac brick-yard, situate between Addison and Arlington stations, took the defendant's 5.45 morning train on December 11, 1902, as was his habit. The conductor called out Addison station, but the morning being dark the plaintiff could not tell just where the train then was. He sat still until the conductor called out the station a second time. When the train apparently was about to come to a full stop, he left his seat, which was at the rear end of the trailer, and stepped out on the platform. The train, instead of stopping, made a lurch and threw the plaintiff. Two witnesses corroborated plaintiff as to the action of the train. One who had stepped out on the platform thus described it: "The passengers were all getting ready to go out, and the train made a crush backwards and threw me from my balance. . . . I don't know whether the other man" (the plaintiff) "recovered himself or went over; I didn't see him." The other witness, after stating that after the conductor's second call the passengers rose up to get off, said, "When the last call was made" the train "began to slow down, and before the time I raised up and started to the door it made a sudden lunge and crushed right off, and threw me off my balance." This evidence was in harmony with the declaration, and in the absence of any evidence on behalf of defendant was sufficient proof of defendant's negligence and plaintiff's freedom from any contributing negligence to require the submission of the case to the jury. In the class of cases to which the one at bar belongs the decisions of our courts are not entirely in harmony, and it serves no useful purpose to attempt to reconcile them or to review them at length. Where a rule in a prior case has been stated by this court, which is applicable to a case under review, it should be followed unless it be contrary to a ruling of the United States Supreme Court. In *Harbison v. Railroad Co.*, 9 App. D. C., 60, 69; 24 Wash. Law Rep., 438, this court said: "The true rule surely must be that whilst a passenger may ride on the platform or foot-board of a car, with the expressed or implied consent of the carrier, without incurring the imputation of contributory negligence as matter of law, he thereby, however, assumes the increased risk that may result therefrom in the ordinary course of things when the car is properly driven or managed. If hurt during the period of this exposure, he must, in order to recover, show affirmatively that the accident was caused in whole or in part by some negligent act of the carrier." The plaintiff's evidence was sufficient to bring his case within this rule and more than sufficient, we think, for he was not riding on the platform, but went on it for the purpose of alighting at his station.

After the plaintiff rested, the defendant called witnesses who contradicted the testimony given by plaintiff and his witnesses. The conductor testified that when the train passed Addison it did not slow up, and that it was going at a speed of twenty-five to thirty miles an hour. He heard a passenger say the train is not going to stop at Addison, and he then went forward to see why it had not stopped, as he had told the trolleyman to stop there. He admits that he had tickets for Addison and would have stopped had the bell not been out of order. The trolleyman admits that during the two months he was so employed the train stopped at Addison every morning. All three of the defendant's employees who were on the train that morning deny with more or less positiveness that there was any lurch of the car, as stated by plaintiff and his witnesses. It is unnecessary to detail the testimony at length. On all material points there was conflicting testimony. Evidence was given tending to show that some of the witnesses had made statements contrary to the evidence given on the trial, and the reputation of one witness for truth and veracity was attacked. In view of the testimony the case was one to be submitted to the jury, and no error was committed by the trial judge in refusing defendant's motion to instruct the jury to return a verdict for the defendant. Upon the refusal of this motion various prayers were submitted to the court, the only ones remaining to be considered being plaintiff's first prayer and defendant's sixth prayer, which are as follows:

I. The jury are instructed that if they find from the evidence that the defendant company was a common carrier of passengers, and that the plaintiff was a passenger on one of defendant's cars, and while a passenger on board of said car was injured, then, to relieve itself from liability for such injury, the burden of proof is on the defendant, if its defense be contributory negligence, to show that the plaintiff was negligent, and that his negligence caused or contributed to the production of the injury.

VI. The jury are instructed that, in this case, no presumption of negligence on the part of the defendant can be indulged in from the mere happening of the accident and the receiving of an injury by plaintiff.

The court granted the former and denied the latter, and to both of these rulings counsel for defendant duly excepted. These rulings are assigned as error, as also is the following, contained in the general charge:

"That is to say, if you find from the evidence in this case that the plaintiff was riding on this car, and while he was a passenger he was injured, then that would establish a *prima facie* case; that is to say, he has established the fact of the injuries, and that it was not through his fault that he was injured, and that he was a passenger on the car, and while a passenger on that car he was injured. Then the burden of proof shifts. Then it becomes necessary for the defendant to show you by a fair preponderance of the testimony that his injury was caused by his own negligence."

This statement was made by the court in explanation of plaintiff's first prayer, which was granted and was as above quoted.

While it may be that the prayer, and com.

ment thereon, may, when taken by themselves, be somewhat too favorable to the plaintiff, we think that the charge of the court, as a whole, was, if anything, more favorable to the defendant than it had the right to claim, and that when the prayer and comment are "taken in connection with the context" they accurately state the law of the case. *Lehman v. District of Columbia*, 19 App. D. C., 232; 30 Wash. Law Rep., 87. We find these qualifying and explanatory statements in the charge:

"The case you are trying here is, did the defendant company so conduct its trains as that it produced a lurch by which the defendant was thrown from the car and injured? Now, that is the contention of the plaintiff. And the prayer of the plaintiff in that respect is as follows: 'The court at this point read the prayer complained of.'"

Again, the court said:

"Now, that simply means this, gentlemen, that if you believe from the evidence in this case that this train was slowing up and about to stop at Addison, and that whilst it was in that condition the plaintiff got up and walked out on the platform preparatory to getting off, and it then suddenly gave a lurch and started off rapidly, by which he was thrown and injured, and you further find that he used such ordinary caution and prudence as a reasonable man would have used in going out there, in regard to his own safety, then the plaintiff is entitled to recover."

"Now, I wish to read to you, in connection with that, another prayer. It puts it upon a different basis."

"Now, you are instructed that if you shall find upon the occasion in question that the plaintiff went upon the platform of defendant's car, and at the time of so doing said train was not slowing up, but was in motion and proceeding on its way from Addison Station to Arlington Junction, and that while plaintiff was so upon said platform the speed of the train was changed, and that any jolt or jar occurred by reason thereof, and by reason thereof plaintiff was thrown or fell from the platform and was injured, nevertheless, plaintiff would not be entitled to recover unless the jury shall further find that defendant had knowledge of the exposed position of plaintiff at the time, and had time and opportunity to prevent injury to him, and that, instead of so doing, it caused the accident and injury by changing the speed of said train."

"Now, taking these two prayers together you will see that they proceed upon different theories. If you find from the evidence in this case that the train was slowing up and about to stop at Addison, and that the plaintiff got up from his seat and went out on the platform expecting to get off, and then there was a sudden start and a lurch produced by that, through which the plaintiff was thrown off while he was reasonably careful and prudent in his actions, then, if he was hurt in that way the plaintiff is entitled to recover in this action. If, on the other hand, you find from the evidence in this case that the train was not slowing up at Addison and about to stop, but was in motion on its way from Addison to Arlington, and that thereupon, whilst that was going on,

the plaintiff went out on the platform, and then by a sudden lurch produced by the quickening speed of the train the plaintiff was thrown off, he would not be entitled to recover, unless you should further find from the evidence in the case that the defendant company had notice of this dangerous place where he was, and would have had time to prevent it after they had that knowledge."

"So, you see the different theories upon which these prayers go. In one case it was slowing up and about to stop, and then, under the circumstances which I have given you, if you find he was hurt, he is entitled to recover. But if it was not slowing up, but in motion, on its way to Arlington Junction, and he was then thrown off by a lurch, by reason of the increased speed, he would not be entitled to recover, provided the defendant company did not have notice that he was there in time to have prevented the injury."

Furthermore, we think the court was warranted in granting the prayer complained of, and, in his comments following it, in view of *Railroad Co. v. Svedborg*, 20 App. D. C., 543; 30 Wash. Law Rep., 823. In the opinion in that case, which was written by Mr. Chief Justice Alvey, it was said at page 549:

"It is true, to make out a *prima facie* case, the burden of proof of negligence on the part of the defendant, as the cause of the injury, was upon the plaintiff, but this burden is changed, in the case of a passenger, by showing that the accident occurred that caused the injury to the plaintiff, while the latter was a passenger. The burden of proof is then cast upon the defendant to explain the cause of the accident, and to show, if that be the defense, that the plaintiff was negligent and that her negligence caused, or contributed to the production of, the injury."

In *Gleason v. Virginia Midland Railroad Co.*, 140 U. S., 435, the court at page 443 said:

"Since the decision in *Stokes v. Saltonstall*, 13 Pet., 181, and *Railroad Co. v. Pollard*, 22 Wall., 341, it has been settled law in this court that the happening of an injurious accident is in passenger cases *prima facie* evidence of negligence on the part of the carrier, and that (the passenger being himself in the exercise of due care), the burden then rests upon the carrier to show that its whole duty was performed, and that the injury was unavoidable by human foresight." To the same effect, *Inland and Seaboard Coasting Co. v. Tolson*, 139 U. S., 551.

Our conclusion is that it was not error to overrule the demurrer, nor to submit the case to the jury, and that the prayers, taken in connection with the whole charge, were correctly passed upon, and that the whole charge is a just and fair statement of the law of the case.

There being no error in the judgment below, it follows that it must be affirmed, with costs.

Affirmed.

Mere disappointment and regret are held, in *Hancock v. Western U. Teleg. Co. (N. C.)*, 69 L. R. A., 403, not to be included in the rule allowing damages for mental anguish upon failure of a telegraph company promptly to deliver a death message.



## Court of Appeals of the District of Columbia

MABEL GRACE MCKAY ET AL., EXECUTORS, ETC., APPELLANTS,

v.

JOHN C. BRADLEY, USE OF GUARANTEE TRUST AND SAFE DEPOSIT COMPANY.

FOREIGN JUDGMENTS; STATUTE OF LIMITATIONS; RIGHT TO PLEAD PRESERVED BY SEC. 1638, CODE D. C.

1. Section 1267, Code D. C., as amended, has no other effect than to bar an action upon a judgment of another State that is barred, at the time of the commencement of the action in this District, by the laws of that State; and unless so barred by the laws of that State, there is no statutory period applicable to it in an action brought thereon in this District, and the only available defense founded on the lapse of time is that furnished by the common law, which raises a presumption of payment after twenty years.
2. Where, however, at the time the Code went into effect, more than twelve years had elapsed since the rendition of a foreign judgment, and a plea of the statute of limitations formerly in force in this District would have been available to the judgment debtor, the right to plead the statute in bar of an action thereafter brought in this District on such judgment is preserved to the defendant by the saving clause of sec. 1638, Code D. C., whereby it is provided that "the repeal by the preceding section of any statute, in whole or in part, shall not affect any . . . right accruing or accrued, but . . . shall continue and may be enforced in the same manner as if such repeal had not been made."

No. 1596. Decided January 4, 1906.

APPEAL (specially allowed) from an order of the Supreme Court of the District of Columbia, at Law, No. 47,633, sustaining a demurrer to plea of the statute of limitations in a suit on a foreign judgment. Reversed.

*Mr. A. A. Birney* and *Mr. A. S. Worthington* for the appellant.

*Mr. Fulton Lewis* for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the court:

1. This action was begun April 8, 1905, by John C. Bradley, for the use of the Guarantee Trust and Safe Deposit Company, against the executors of the will of Nathaniel McKay, who died in the District of Columbia, July 10, 1902, upon a judgment for the sum of \$2,585.15 recovered against said McKay in one of the Supreme Courts of the State of New York, on May 8, 1889.

Defendant's pleas were: 1. No such record as alleged; 2. Three years' limitation; 3. Twelve years' limitation.

Plaintiff's demurrers to the second and third pleas were sustained, and from that order a special appeal was applied for and allowed by this court.

2. Twelve years having elapsed, the judgment declared on was barred on May 9, 1901, by the Maryland Statute of Limitations of 1715, then in force in the District of Columbia, which provides that "no . . . judgment . . . shall be good and pleadable or admitted in evidence against any person . . . after . . . or the debt or thing in action above twelve years' standing." Ch. 23, sec. 6; Galt v. Todd, 5 App. D. C., 350, 353; 23 Wash. Law Rep., 98.

This statute, with others, was repealed or superseded by the District Code, which took effect from and after January 1, 1902. The

section thereof relating to limitations of actions upon foreign judgments is the following:

"Sec. 1267. Every action upon a judgment or decree entered in any State or territory of the United States, or in any foreign country, shall be barred if by the laws of such State, territory, or foreign country such action would there be barred, and the judgment or decree be incapable of being otherwise enforced there [and whether so barred or not, no action shall be brought in the District on any such judgment or decree rendered more than ten years before the commencement of such action]."

This section prescribes two rules of limitation. By the first all judgments barred by the law of the place of recovery are barred in the District. By the second, if not barred by the law of the place of recovery, still no action can be brought on any such judgment rendered more than ten years before the commencement of the action.

On June 30, 1902, section 1267 was amended by striking therefrom the last part shown in brackets above in which the second rule aforesaid is embodied.

3. The court was clearly right in striking out the second plea, setting up the limitation of three years under a clause of section 1265, which reads: "No action, the limitation of which is not otherwise specially prescribed in this section, shall be brought after three years," etc. The section is lengthy and prescribes periods of limitation for many actions, civil and criminal, specially enumerated therein. The clause aforesaid was apparently intended to remedy a possible omission of some action that might have been properly embraced in that enumeration. Foreign judgments were provided for specially in section 1267, which still remains in force, though in materially changed form. Domestic judgments were provided for in section 1212, which fixes a period of twelve years.

4. Section 1267, as amended, has no other effect than to bar an action upon a judgment of another State that is barred, at the time of the commencement of the action, by the laws of that State. Striking out the last part of the original section, which fixed an express period of limitation of ten years to actions upon all foreign judgments, did not extend the operation of that which remains any farther than above stated. Its language is too plain to admit of any other construction. Unless, then, a judgment rendered in another State is barred by the laws of that State at the time of the commencement of the action upon it in the District of Columbia, there is no statutory period applicable. The only available defense, therefore, founded on lapse of time, is that furnished by the common law, which raises a presumption of payment after twenty years. Why this distinction was made between actions upon domestic and foreign judgments, giving the latter the preference, we are not advised, but whatever reason there may have been, the matter was one within the exercise of the discretion of the lawmaking power.

5. Accepting the soundness of this construction of the Code and its amendment, the appellants contend that their right to plead the bar of limitation of twelve years, which was complete before the adoption of the Code, was an

acquired and substantial right, expressly saved to them by section 1638, which reads as follows:

"Sec. 1638. The repeal by the preceding section of any statute, in whole or in part, shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before such repeal; but all rights and liabilities under the statutes, or parts thereof, so repealed shall continue and may be enforced in the same manner as if such repeal had not been made. Provided, that the provisions of this Code relating to procedure or practice, and not affecting the substantial rights of parties, shall apply to pending suits or proceedings, civil or criminal."

The denial of this contention by the order sustaining the demurrer is rested upon the doctrine enunciated by the Supreme Court of the United States in *Campbell v. Holt*, 115 U. S., 620. That case arose under a provision of the constitution of the State of Texas, adopted in 1869, which declared the suspension of all statutes of limitation within that State from January 28, 1861, until the acceptance of that constitution by the Congress of the United States, a period of about nine years.

The statutes of limitation had been suspended by acts of the legislature during the civil war, but it was enacted in 1866 that those suspended statutes should again commence to run on September 2 of that year. One of them applied the bar of two years to actions of the character of that brought by the plaintiff, and she, being under no disability, suffered that time to elapse without bringing her action. After the adoption and acceptance of the constitution of 1869 she brought her action, and the defendants pleaded the said statute of limitations in bar. Their contention was that the bar of the statute being complete and perfect, could not as a defense be taken away by the constitutional provision, because to do so would violate the provision of the Fourteenth Amendment to the Constitution of the United States, which declares that no State "shall deprive any person of life, liberty, or property without due process of law." The court, admitting that where the action is to recover real or personal property the removal of the bar of the statute of limitations after the same had become perfect would have the effect to deprive the defendant of his property without due process of law, expressly denied that the right to plead the statute of limitations in bar of the recovery of a debt constituted a property right that was beyond the legislative power to take away.

In conclusion Mr. Justice Miller, who delivered the opinion of the majority of the court, said: "We are unable to see how a man can be said to have property in the bar of the statute as a defense to his promise to pay. In the most liberal extension of the use of the word property to choses in action, to incorporeal rights, it is new to call the defense of lapse of time to the obligation to pay money, property. It is no natural right. It is the creation of conventional law. We can understand a right to enforce the payment of a lawful debt. The Constitution says that no State shall pass any law impairing this obligation. But we do not understand the right to satisfy that obligation by a protracted failure to pay. We can see no right which the

promisor has in the law which permits him to plead lapse of time instead of payment, which shall prevent the legislature from repealing that law, because its effect is to make him fulfil his honest obligations."

It is to be borne in mind that there was no saving clause in the constitutional provision under consideration in that case. It was an absolute suspension of all statutes of limitation, without exception, for a period of about nine years; and the enactment of an accompanying provision, saving rights or remedies under any of those statutes, would have been in conflict with its express purpose. Radically different conditions prevailed in the District of Columbia in response to which the Code was enacted; and to remedy some of the mischiefs that might result from the repeal of many existing laws and the supersession of others, section 1638 was included therein. It becomes necessary, therefore, to consider whether the right to plead the completed bar of the former statute of limitations was one of the rights intended to be saved thereby.

While this was not property, or a natural right, the preservation of which was guaranteed by the Fifth Amendment, but only a "creation of conventional law," it was, nevertheless, a valuable privilege. Though not a natural or vested right, as commonly called, it was still a right in the general sense of that word, created by law, in accordance with time-honored public policy. Statutes of limitation have not been enacted to defeat the recovery of just debts, notwithstanding they may often have that effect, but to protect persons from the assertion of ancient claims, however well founded originally, of which the evidence of discharge may be lost. The present case is an apt illustration of the wisdom and beneficence of such legislation. The judgment was against a man whose nearby residence was well known. He was presumably solvent, and yet more than twelve years, during which he was alive, were permitted to elapse without an effort to enforce the judgment. He lived ten days after the amendment of section 1267, but no action was brought until nearly three years after his death. Evidence, if any he had, of the payment or discharge of this judgment, so long quiescent, perished with him.

The ordinary injustice of reviving stale demands, especially in view of the conditions above mentioned, is apparent; and, however expedient it may have seemed to abrogate long existing remedies against the enforcement, after a reasonable lapse of time, of foreign judgments then alive, or thereafter to be rendered, it was both expedient and just to provide against the revival of such as had been completely barred by the former laws before their repeal.

Considerations of the kind mentioned, as well as many others analogous thereto, were evidently in contemplation by the framers of a code enacted to supersede a mass of statutory law, much of which, enacted years before by the legislature of the State of Maryland, had been in force in the District of Columbia since its cession to the United States by that commonwealth.

If the words "rights," "acquired rights," and

"substantial rights," as used in section 1638, are to be construed as meaning natural rights, or rights in the nature of property, and nothing more, the enactment would have been plainly superfluous, for these are amply protected by the Fifth Amendment to the Constitution from abrogation or invasion.

In view of the mischiefs intended to be prevented, we are of the opinion that those words should be given a broad and comprehensive signification. It is true that pleas of the statutes of limitation have always been regarded as affecting the remedy and not the merits, yet remedies are the life of rights, and deprivation of a remedy often amounts to the complete deprivation of a right in its strictest sense.

The remedy afforded by the completed bar of a statute of limitations, though not a right of property, is, as we have said before, a valuable privilege, and in the general sense of the word a right that has been everywhere created by law in obedience to dictates of sound public policy.

Giving to section 1638 aforesaid the liberal construction which its spirit demands, we are compelled to regard this as one of the rights under the statutes repealed which it is declared "shall continue and may be enforced in the same manner as if such repeal had not been made." Moreover, the proviso to the section, although not specially applicable to this case, which was not then depending, shows that its framers had in contemplation not merely vested rights or rights of property, but substantial rights relating to procedure or practice, that is to say rights inherent in remedies.

These conclusions are in accord with previous decisions of this court involving a construction of section 1638 as applied to different facts which, however, presented questions analogous in their nature. *Costello v. Palmer*, 20 App. D. C., 210-221; 30 Wash. Law Rep., 402; *Shelly v. Westcott*, 23 App. D. C., 135-138; 32 Wash. Law Rep., 68.

The first of those cases declared the continuance of a remedy given by sections 794 and 795 R. S. D. C. (repealed by the Code), providing for the arrest and detention of debtors who fraudulently conveyed their property. In the second, it was held that the right to take a case out of the operation of the statute of limitations, through acknowledgment of the debt by words only, was saved to the plaintiff by the proviso to section 1638, notwithstanding section 1271 of the Code provided that all such acknowledgments and promises, to be available, shall be in writing. The contention denied was, that as section 1271 prescribed a rule of evidence merely, and affected only the remedy, and not the rights of the party, it did not affect a substantial right so as to be saved by section 1638.

In *Bechtel v. U. S.*, 101 U. S., 597, 598, a statute making a transcript from the books and proceedings of the Treasury admissible in evidence in certain actions under the revenue laws was included in the general repeal by section 5596 R. S., after having been substituted by section 898, which differed materially in form and substance. The court held that the transcript was admissible in evidence notwithstanding, by virtue of the provisions of section 5597,

which saved all rights which had accrued under any of the acts that had been abrogated, and declared that all such rights "shall continue and be enforced in the same manner as if said repeal had not been made."

Clearly this was not a greater or a better founded right than that to plead the completed bar of a former statute of limitations, which we hold to have been saved by like words in section 1638.

In view of the decisions cited, we consider it unnecessary to review the conflicting decisions of the State courts, involving analogous questions, that have been cited in the briefs of both parties, none of them being directly in point.

For the error committed in striking out the defendant's third plea, the order appealed from will be reversed to that extent, with costs, and the cause remanded for further proceedings not inconsistent with this opinion. It is so ordered.

Reversed.

The measure of damages for false and fraudulent representations by which a party had been induced to exchange real property for stock in a corporation, but who had affirmed the contract after discovering the deceit, is held, in *Beare v. Wright* (N. D.), 69 L. R. A., 409, to be, in the absence of a claim for special or exemplary damages, the difference in the value between what was received or parted with, as the case may be, and what would have been received or parted with had the representations been true.

If the memoranda of inspection of engines prepared by the men in charge of that work, and filed in the office of the railroad company, have been lost, and the facts with regard to the inspection forgotten by them, it is held, in *Manchester Assur. Co. v. Oregon R. & N. Co.* (Or.), 69 L. R. A., 475, that such facts may be proved by the introduction in evidence of a transcript of such memoranda, entered by the proper clerk in a book kept for that purpose, accompanied by his testimony, and that of the inspectors, showing that inspections were made and properly entered in the book.

Owners of property in possession of tenants are held, in *New Castle v. Kurtz* (Pa.), 69 L. R. A., 488, not to be bound to keep watch to see that ice dangerous to travel does not form on the walks in front of it, which are properly constructed and in proper repair, where their negligent construction of their buildings does not contribute to its formation.

A statute giving building and loan associations the right to assess and collect from members and depositors such dues, fines, interest, and premium on loans made, or other assessments, as may be provided for in the constitution and by-laws; and which provides that such dues, fines, etc., shall not be deemed usury, although in excess of the legal rate of interest, is held, in *Cramer v. Southern Ohio Loan & T. Co.* (Ohio), 69 L. R. A., 415, to be valid.

**Supreme Court of the United States.**

**THE UNITED STATES, USE OF DANIEL H.  
HILL ET ALS., PLAINTIFFS IN ERROR,**

v.

**THE AMERICAN SURETY COMPANY OF  
NEW YORK.**

**BONDS TO UNITED STATES; RIGHTS OF PARTIES FURNISHING LABOR OR MATERIALS; ACT OF AUGUST 13, 1894, CONSTRUED.**

All persons furnishing the contractor with labor or materials in the prosecution of the work provided for in the contract, whether furnished under the contract directly to the contractor, or to a subcontractor, are within the protection afforded by the act of August 13, 1894, requiring persons having contracts with the United States for the construction or repair of public buildings or works to give bond, with the additional obligation that prompt payment shall be made to all persons supplying the contractor with labor or materials in the prosecution of the work provided for in the contract.

No. 39. October Term, 1905. Decided January 2, 1906.

IN ERROR to the Superior Court of King County, State of Washington. Reversed.

Mr. Justice DAY delivered the opinion of the Court:

This case was decided on demurrer in the court below. It was held that no cause of action was stated by the plaintiff, and judgment was rendered accordingly. Plaintiffs brought action as partners against the American Surety Company upon a bond given in pursuance of the act of August 13, 1894: 28 Stat., c. 280, 278. The allegations of the petition, so far important as to be noticed here, are: The defendant is a corporation duly authorized to do a general insurance and bonding business. On February 14, 1891, the New Jersey Foundry and Machine Company entered into a written contract with the United States for the construction of four observation towers, for the agreed compensation of \$2,575. That, among other things, it was stipulated in the contract "that the said New Jersey Foundry and Machine Company shall be responsible for and pay all liabilities incurred in the prosecution of the work for labor and material," the work to be completed within seven months from date of contract. The United States required of the said New Jersey Foundry and Machine Company a bond, which was executed by the company and the American Surety Company as surety, on the 14th day of February, 1901, in the penal sum of \$4,000, to be paid unto the United States of America, which bond contained the condition: "Now, therefore, if the above bounden New Jersey Foundry and Machine Company shall and will in all respects duly and fully observe and perform all and singular the covenants, conditions and agreements in and by said contract agreed and covenanted by said New Jersey Foundry and Machine Company to be observed and performed, according to the true intent and meaning of said contract, and as well during any period of extension of said contract that may be granted on the part of the United States, as during the original terms of the same, and shall promptly make full payments to all persons supplying it labor or ma-

terials in the prosecution of the work provided for in said contract, then the above obligation shall be void and of no effect; otherwise, to remain in full force and virtue." That afterwards the said New Jersey Foundry and Machine Company entered into a contract with the Richard Manufacturing Company for certain portions of the work, and said Richard Manufacturing Company entered upon the performance of the contract, and in the performance thereof, between the third day of April and the 17th day of May, of the same year, Daniel H. Hill and Howard H. Hill, the plaintiffs, at the special instance and request of the said Richard Manufacturing Company, scraped and painted the four observation towers, to be constructed under the contract with the said New Jersey Foundry and Machine Company, for which said Richard Manufacturing Company agreed to pay the said plaintiffs the sum of \$246.80, of which there is unpaid the sum of \$141.80. That on the 11th day of August, 1903, plaintiffs made the affidavit required by the statute, and procured from the Secretary of War of the United States certified copies of the original contract and bonds; that the said New Jersey Foundry and Machine Company, the Richard Manufacturing Company, and the United States accepted the said scraping and painting so done and performed by the plaintiffs in the necessary prosecution of the work required by the original contract.

The statute under consideration is entitled "An act for the protection of persons furnishing materials and labor for the construction of public works." It provides, in substance, that persons entering into formal contracts with the United States for the construction or repair of public buildings and works shall be required, before performing such work, to execute the usual penal bond with good and sufficient surety, with the additional obligation "that such contractor or contractors shall promptly make payments to all persons supplying him or them labor or materials in the prosecution of the work provided for in such contracts." The statute further provides for the furnishing of a copy of the contract and bond to persons furnishing an affidavit that labor and materials for the prosecution of such work have been supplied by him or them, and giving a right of action in the name of the United States for the benefit and use of said person or persons against the contractor and his sureties.

We may remark, before considering the construction to be given this act, that it has been materially amended by the act of February 24, 1905. 33 Stat., 811. The amended act makes provision for preference in payment in favor of the United States, limits the time in which actions may be brought, provides for bringing all the creditors into one action, and for the prosecution of the same in the name of the United States in the Circuit Courts of the United States in the district in which the contract was to be performed, and not elsewhere. In respect to the persons entitled to the benefit of the bond there has been no material change in the act. While not governing the present action the amended statute has some bearing in construing the act in question, as it shows the consistent purpose of Congress to protect those

who furnish labor or material in the prosecution of public work.

In considering the statute and determining the scope of the bond divergent views have been urged upon the court. Upon the one hand it is insisted that the bond is to be strictly construed and a recovery limited to those who have furnished material or labor directly to the contractor, and upon the other that a more liberal construction be given and a recovery permitted to those who have furnished labor and materials which have been used in the prosecution of the work, whether furnished under the contract directly to the contractor, or to a subcontractor.

This statute was before this court in *Guaranty Co. v. Pressed Brick Co.* (191 U. S., 416), and while the question whether surety companies which are such for compensation are entitled to the same strict construction of their rights and obligations as is accorded to private sureties, who become such without reward or profit, was left open, it was, nevertheless, said: "The rule of strictissimi juris is a stringent one, and is liable at times to work a practical injustice. It is one which ought not to be extended to contracts not within the reason of the rule, particularly when the bond is underwritten by a corporation which has undertaken for a profit to insure the obligee against a failure of performance on the part of the principal obligor. Such a contract should be interpreted liberally in favor of the subcontractor, with a view of furthering the beneficent object of the statute. Of course, this rule would not extend to cases of fraud or unfair dealing on the part of a subcontractor, as was the case in *United States v. American Bonding & Trust Company*, 89 Fed. Rep., 921, 925, or to cases not otherwise within the scope of the undertaking."

The courts of this country have generally given to statutes intending to secure to those furnishing labor and supplies for the construction of buildings a liberal interpretation, with a view of effecting their purpose to require payment to those who have contributed by their labor or material to the erection of buildings to be owned and enjoyed by those who profit by the contribution of such labor or materials. *Mining Co. v. Cullens*, 104 U. S., 176, 177. And the rule which permits a surety to stand upon his strict legal rights, when applicable, does not prevent a construction of the bond with a view to determining the fair scope and meaning of the contract in the light of the language used and the circumstances surrounding the parties. *Ulster County Savings In. v. Young*, 61 N. Y., 23, 30.

As against the United States, no lien can be provided upon its public buildings or grounds, and it was the purpose of this act to substitute the obligation of a bond for the security which might otherwise be obtained by attaching a lien to the property of an individual. The purpose of the law is, as its title declares: "For the protection of persons furnishing materials and labor for the construction of public works." If literally construed, the obligation of the bond might be limited to secure only persons supplying labor or materials directly to the contractor, for which he would be personally liable.

But we must not overlook, in construing this obligation, the manifest purpose of the statute to require that material and labor actually contributed to the construction of the public building shall be paid for and to provide a security to that end.

Statutes are not to be so literally construed as to defeat the purpose of the legislature. "A thing which is within the intention of the makers of the statute is as much within the statute as if it were within the letter." *United States v. Freeman*, 3 How., 556. "The spirit as well as the letter of the statute must be respected, and where the whole context of a law demonstrates a particular intent in the legislature to effect a certain object some degree of implication may be called in to aid that intent." Chief Justice Marshall in *Durousseau v. United States*, 6 Cranch, 308.

Looking to the terms of this statute in its original form, and as amended in 1905, we find the same Congressional purpose to require payment for material and labor which have been furnished for the construction of public works. The affidavit to be filed with the head of the department under the direction of which the work has been prosecuted requires the affiant to state that labor, or materials for the prosecution of such work has been supplied by him, for which payment has not been made, and such persons are given a right of action on the bond in the name of the United States. Language could hardly be plainer to evidence the intention of Congress to protect those whose labor or material has contributed to the prosecution of the work. There is no language in the statute, nor in the bond which is therein authorized, limiting the right of recovery to those who furnish material or labor directly to the contractor, but all persons supplying the contractor with labor or materials in the prosecution of the work provided for in the contract are to be protected. The source of the labor or material is not indicated or circumscribed. It is only required to be "supplied" to the contractor in the prosecution of the work provided for. How supplied is not stated, and could only be known as the work advanced and the labor and material are furnished.

If a construction is given to the bond so limiting the obligation incurred as to permit only those to recover who have contracted directly with the principal, it may happen that the material and labor which have contributed to the structure will not be paid for, owing to the default of subcontractors, and the manifest purpose of the statute to require compensation to those who have supplied such labor or material will be defeated.

We cannot conceive that this construction works any hardship to the surety. The contractor gets the benefit of such work or material. It is distinctly averred in this case that the original contractor received the benefit of the work done and it was used in part performance of his contract. It is easy for the contractor to see to it that he and his surety are secured against loss by requiring those with whom he deals to give security by bond, or otherwise, for the payment of such persons as furnish work or labor to go into the structure. In view of the declared purpose of the statute,

in the light of which this bond must be read, and considering that the act declares in terms the purpose to protect those who have furnished labor or material in the prosecution of the work, we think it would be giving too narrow a construction to its terms to limit its benefits to those only who supply such labor or materials directly to the contractor. The obligation is "to make full payments to all persons supplying it with labor or materials in the prosecution of the work provided for in said contract." This language, read in the light of the statute, looks to the protection of those who supply the labor or materials provided for in the contract, and not to the particular contract or engagement under which the labor or materials were supplied. If the contractor sees fit to let the work to a subcontractor, who employs labor and buys materials which are used to carry out and fulfil the engagement of the original contract to construct a public building, he is thereby supplied with the materials and labor for the fulfilment of his engagement as effectually as he would have been had he directly hired the labor or bought the materials.

We reach the conclusion that the labor and materials furnished in this case were within the obligation of the Surety Company on the bond, and in that view the judgment of the Superior Court is reversed and the cause remanded for further proceedings not inconsistent with this opinion.

#### Land—Sale—Quantity—Agent.

The Supreme Court of Minnesota held, in the case of *Lang v. Mehrbach et al.*, that where an owner of real estate places the same in the hands of an agent to be sold according to the acreage appearing by his title papers, and the agent represents to a purchaser that the tract contains a specified number of acres, but less than the amount called for by the Government survey, and the purchaser relies in good faith upon such representations and buys the property at a stipulated price per acre, the owner is liable to the purchaser at the specified price per acre for the difference between the actual amount and the amount represented.

Where a will, the body of which is written on horizontal lines on several pages of foolscap paper, so that all its items and provisions are in consecutive order to the end of the last page, under which the testator's signature appears, but there is also written in the margin of the last page to the left of, and separated from, the body of the instrument, a dispositive clause extending lengthwise of the page from near the bottom to near the top, and in no manner connected with the body of the instrument by any words or marks to indicate where the marginal matter is to be read in relation to the other provisions, and it is established by testimony that the marginal matter was written after all the other provisions, at the request of the testator, and before he attached his signature under the body of the will, it is held, in *Irwin v. Jacques* (Ohio), 69 L. R. A., 422, that the will is not signed at its end, as required by statute, and is invalid for that reason.

**Conditional Sale—Trustee in Status of Execution Creditor—Contract Made in One State and Performed in Another.**—The petitioners delivered to the bankrupt certain shipments of leather, in the raw state, to be manufactured and in the nature of a commodity, under contract that the goods should remain the property of the petitioners until paid for, and that until paid for the bankrupt was not to part with the possession without the consent of the petitioners, and also to keep the goods insured. The contract was entered into in the State of New York and performed in Pennsylvania. The goods were received by the trustee in bankruptcy as of the estate of the bankrupt. Held, that the title of the trustee to the goods should be regarded as that of an execution creditor; that the contract was a conditional sale and should be governed by the laws of Pennsylvania, which provide that the title of a vendor under a contract of conditional sale is void as against execution creditors; and that the contract did not give the petitioners any title as against the trustee.—*Matter of Hess*, 14 Am. B. R., 635.

**Receivers in Bankruptcy—Appointment Without Notice—Constitutional Law.**—The appointment of a receiver of a bankrupt, before adjudication, without notice to the bankrupt, who was in prison for engaging with two others, who had absconded, in procuring money through the mails by fraudulent representation, held not void as taking property without due process of law, where a notice would in all probability defeat the very object of the appointment.—*In re Francis*, 14 Am. B. R., 676.

**Mortgage—Recorded After Adjudication—Sections 67a, 70a Construed.**—Where a mortgagee in Pennsylvania failed to record a mortgage, given by a voluntary bankrupt, until after adjudication and election of trustee, the encumbrance was void as against the trustee under section 67a, which states an exception to the rule laid down in 70a, that the trustee takes no better title than the bankrupt possessed.—*In re Nathan Lukens*, 14 Am. B. R., 683.

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## FINANCIAL.

We, the undersigned, a majority of the Board of Trustees of the U. S. Bindery and Paper Goods Company, of Washington City, do hereby certify that the capital stock of the said corporation is \$25,000; that stock to the amount of \$8,370 has been issued and paid in full; that there remains in the treasury \$18,630, and that the existing debts are \$1,583.82. M. W. MOORE, A. C. HOUGHTON, O. E. NEWTON.

Subscribed and sworn to before me, a notary public in and for the District of Columbia, this 17th day of January, 1906. ALFRED D. SMITH, Notary Public. 3-1t

## Annual Report of the Law Reporter Company of Washington City.

In compliance with section 617, Code, District of Columbia, we, the undersigned, a majority of the Board of Trustees of The Law Reporter Company of Washington City, do hereby certify that the capital stock of the said corporation is \$6,000, all of which has been paid in, and that there are no existing debts.

HUGH T. TAGGART, *President*.  
M. W. MOORE, *Vice-President*.  
WILLIAM A. GORDON.  
RALPH P. BARNARD, *Treasurer*.  
H. RANDALL WEBB, *Secretary*.

Subscribed and sworn to before me, a notary public in and for the District of Columbia, this 17th day of January, 1906.

ALFRED D. SMITH,  
*Notary Public, D. C.*

3-1t

## Annual Report of the Onondaga Gas and Oil Company, January, 1906.

## REPORT.

## To the Recorder of Deeds:

In compliance with section 617 of the laws of the District of Columbia, we respectfully submit the accompanying report of the condition, on the first day of January, 1906, of the affairs of the Onondaga Gas and Oil Company, which was incorporated under the laws of the District of Columbia, January 7, 1904.

Capital stock of the company.....	\$100,000 00
Amount of stock sold.....	57,180 00
Amount paid in.....	55,960 00
Amount of existing debts.....	none.

Respectfully submitted.

SAMUEL S. YODER,  
*President*.

D. H. BOUGHTON,  
A. M. LEGG,  
S. S. YODER,  
*Trustees*.

## DISTRICT OF COLUMBIA, ss.:

The above report is correct.

A. M. LEGG, *Secretary*.

Subscribed and sworn to before me this 5th day of January, 1906.

(Signed)

CLARA M. HASLUP,  
*Notary Public*.

[Seal.]

## RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

## Legal Notices.

## FIRST INSERTION.

## Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of William C. Lewis, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of January, 1906. ANNA L. LEWIS, The Mendota. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,375. Administration. [Seal] 3-3t

## Legal Notices.

## George E. Fleming, Attorney

## Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of George H. Weeks, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of January, 1906. CROSBY P. MILLER, Room 221, War Department. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,394. Administration. [Seal.] 3-3t

## Pennebaker &amp; Jones, Attorneys

## Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Henry Kuhn Hoff, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of January, 1906. ARTHUR EAINBRIDGE HOFF, care of Pennebaker & Jones, 1331 F St. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,399. Administration. [Seal.] 3-3t

## Stanton C. Peelle, Attorney

## Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Pennsylvania, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Herman Haupt, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of January, 1906. LEWIS M. HAUPT, 107 N. 55th st., Phila., Pa. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,406. Administration. [Seal.] 3-3t

## Edwin A. McIntire, Attorney

## Supreme Court of the District of Columbia, Holding Probate Court.

## Estate of Martha McIntire, Deceased. No. 13,367. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Edwin A. McIntire, the executor nominated in said will, it is ordered, this 16th day of January, A. D. 1906, that notice be and hereby is given to William E. McIntire and Henry Norman McIntire, whose exact residence is not known; but they are believed to be on the Pacific coast of the United States. They have not been heard from for two years. The last known address of William E. McIntire was, printer, Colfax, State of Washington, and of Henry N. McIntire was, poultry dealer, San Diego, California, and to all others concerned, to appear in said court on Monday, the 19th day of February, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 3-3t

New corporations can procure from the Law Reporter Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated, numbered, and bound.



## Legal Notices.

**E. H. Thomas and James Francis Smith, Attorneys**  
In the Supreme Court of the District of Columbia,  
Holding a District Court.

In the Matter of the Extension of T Street Eastward from Lincoln Avenue Northeast to Second Street Northeast, in the District of Columbia. No. 850, District Court.

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of an act of Congress approved March 3, 1905, entitled "An Act for the extension of T street, and for other purposes," have filed a petition in this court praying for the condemnation of the land necessary for the extension of T street eastward from Lincoln avenue northeast to Second street northeast, with a width of ninety feet, as shown on a plat or map prepared by the said Commissioners and annexed to their said petition, and marked "Exhibit D. C. No. 1," and praying also that a jury of seven judicious, disinterested men, not related to any person interested in these proceedings, and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States marshal for the District of Columbia to assess the damages each owner of land taken may sustain by reason of the extension of said street and the condemnation of the land necessary for the purposes of such extension, and to assess the benefits resulting therefrom, as provided in the aforesaid act of Congress. It is, by the court, this 15th day of January, A. D. 1906, ordered that all persons having any interest in these proceedings be, and they are hereby, warned and required to appear in this court on or before the 9th day of February, A. D. 1906, at 10 o'clock A. M., and to continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be summoned herein; and it is further ordered that a copy of this notice and order be published once in The Washington Law Reporter, and on six secular days in The Evening Star, The Washington Post, and The Washington Times, newspapers published in said District, before the said 9th day of February, A. D. 1906. It is further ordered that a copy of this notice and order be served by said marshal or his deputies upon such owners of the land to be condemned herein as may be found by said marshal or his deputies within the District of Columbia before said

[Seal.] 9th day of February, A. D. 1906. By the court: **ASHLEY M. GOULD, Justice.** A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 8-1t

**Reginald S. Huidekoper, Solicitor**  
In the Supreme Court of the District of Columbia,  
Holding an Equity Court.  
**Mary E. McElhannon, Complainant, v. J. Walter McElhannon and Catherine Burgess, Defendants.** In Equity. No. 25,782.

The object of this suit is to obtain a divorce from the bonds of marriage. On motion of the complainant, it is, this 9th day of January, A. D. 1906, ordered that the defendants, J. Walter McElhannon and Catherine Burgess, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order is to be published in The Washington Law Reporter and The Washington Times once a week for three successive weeks.

[Seal.] By the court: **THOS. H. ANDERSON, Justice.** A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 8-8t

**S. V. Hayden, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.  
**Estate of John Shafer, Deceased.** No. 13,865. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Mary Irene Shafer, it is ordered, this 16th day of January, A. D. 1906, that notice be and hereby is given to Irene Baker, infant, and to all others concerned, to appear in said court on Monday, the 19th day of February, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in the Washington Law Reporter once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] **WENDELL P. STAFFORD, Justice.** Attest: **Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.** 8-8t

## Legal Notices

**E. H. Thomas and James Francis Smith, Attorneys**  
In the Supreme Court of the District of Columbia,  
Holding a District Court.

In re Condemnation of Land Necessary for the Joining of Kalorama Avenue and Prescott Place.  
District Court, No. 852.

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of an act of Congress approved March 3, 1905, entitled "An Act to provide for condemning the land necessary for joining Kalorama avenue and Prescott Place," have filed a petition in this court praying the condemnation of the land necessary for the extension of Kalorama avenue from its western terminus to Prescott Place, as shown on a plat or map prepared by the said Commissioners and annexed to their said petition and marked "Exhibit D. C. No. 1," and praying, also, that a jury of seven judicious, disinterested men, not related to any person interested in these proceedings, and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States marshal for the District of Columbia to assess the damages each owner of land taken may sustain by reason of the extension of said street and the condemnation of the land necessary for the purposes of such extension, and to assess the benefits resulting therefrom, as provided in the aforesaid act of Congress. It is by the court, this 12th day of January, A. D. 1906, ordered that all persons having any interest in these proceedings be, and they are hereby, warned and required to appear in this court on or before the 6th day of February, A. D. 1906, at 10 o'clock A. M., and to continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be summoned herein; and it is further ordered that a copy of this notice and order be published once in The Washington Law Reporter and on six secular days in The Evening Star, The Washington Post, and The Washington Times, newspapers published in said District, before the said 6th day of February, A. D. 1906. It is further ordered that a copy of this notice and order be served by the United States marshal for said District or his deputies upon such owners of the land to be condemned herein as may be found by said marshal or his deputies within the District of Columbia before the said 6th day of

[Seal] February, A. D. 1906. By the court: **ASHLEY M. GOULD, Justice.** A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 8-1t

**Walter C. Clephane, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**Estate of Wm. B. Brown, Deceased.** No. 11,108. Administration.  
Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration de bonis non on the estate of Wm. B. Brown, by Weston Brown Flint, it is ordered, this 16th day of January, A. D. 1906, that notice be and hereby is given to Nannie C. Sabine, and to all others concerned, to appear in said court on Monday, the 19th day of February, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] **WENDELL P. STAFFORD, Justice.** Attest: **WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.** 8-8t

**Richard A. Curtin, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Frances L. Kilroy, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 21st day of November, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of January, 1906. **JAMES J. KILROY, 16 Eye St. N. E.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 13,289. Administration. [Seal.] 8-8t



**Legal Notices.**

**Lemuel Fugitt, Attorney**  
**Supreme Court of the District of Columbia,**  
 Holding a Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Wate McCarten**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of January, 1906. **LEMUEL FUGITT**, 472 La. Ave. Attest: **W. M. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,383. Admn. [Seal.] 3-3t

**Walter H. Marlow, Jr., Attorney**  
**Supreme Court of the District of Columbia,**  
 Holding a Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Regina Roth Spioer**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of January, 1906. **WALTER H. MARLOW, JR.**, 438 9th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,403. Administration. 3-3t

[Filed January 12, 1906. J. R. Young, Clerk.]  
 Geo. Francis Williams, Solicitor

**In the Supreme Court of the District of Columbia.**  
**Ernestine Frank, an Infant, by Her Guardian, v.**  
**Lawrence Frank et al.** No. 25,856. In Equity.

**George Francis Williams**, trustee, in the above entitled cause, having reported sale of lot 16 in Carpenter's subdivision of lots in square 818 unto **Frances E. Jost** for \$3,950.00, it is this 12th day of January, 1906, ordered that said sale be confirmed unless cause to the contrary be shown on or before the twelfth day of February next; provided this order be published once a week for three successive weeks before that day in The

[Seal] **Washington Law Reporter**. By the Court: **THOS. H. ANDERSON**, Justice. A true copy.  
 Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 3-3t

**SECOND INSERTION.**

**Geo. H. White, Solicitor**

**In the Supreme Court of the District of Columbia.**  
**Isabella McLane v. Cary P. McLane, Cornelia Lindsey.**  
 No. 25,871. Equity Docket, No. —.

The object of this suit is to obtain a divorce from the bonds of matrimony now existing between the plaintiff and the defendant, **Cary P. McLane**, upon statutory grounds, provided a copy of this order be published once a week for three consecutive weeks in The Washington Law Reporter and The Washington Record. On motion of the complainant, it is, this 9th day of January, Anno Domini 1906, ordered that the defendants cause their appearance to be entered herein on or before the 40th day, exclusive of Sundays and legal holidays, occurring after the first day of publication of this order; otherwise this cause will be proceeded with as in case of

[Seal] default. By the court. **THOS. H. ANDERSON**, Justice. True copy. Test: **John R. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. 2-3t

**Millan & Smith, Attorneys**  
**Supreme Court of the District of Columbia,**  
 Holding a Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Eleanor N. T. Meeds**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of December, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of January, 1906. **BENJAMIN N. MEEDS**, 1010 Pa. ave. S. E. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,357. Adm. [Seal.] 2-3t

**Legal Notices.**

**Walter A. Johnston, Attorney**  
**Supreme Court of the District of Columbia,**  
 Holding a Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **James F. Peerce**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of January, 1906. **REBECCA DELANEY HOOE**, 1020 6th st. S. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,283. Administration. [Seal.] 2-3t

**Chas. W. Boyle, Attorney**  
**Supreme Court of the District of Columbia,**  
 Holding a Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Michael F. Griffin**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of January, 1906. **MARGARET E. GRIFFIN**, 305 C st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,553. Admn. [Seal.] 2-3t

**Henry S. Matthews, Attorney**  
**Supreme Court of the District of Columbia,**  
 Holding a Probate Court.

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Victoria E. Leetch**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 5th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 5th day of January, 1906. **WILLIAM A. LEETCH**, 1997 31st st. N. W.; **FRANK P. LEETCH**, 1696 31st st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,377. Administration. [Seal.] 2-3t

**Blair & Thom, Solicitors**

**In the Supreme Court of the District of Columbia,**  
 Holding an Equity Court.  
**George B. Read, Complainant, v. Gertrude R. Randolph et al., Defendants.**

Equity No. 25,910.

The object of this suit is to appoint a trustee in the place of **William Thompson Harris**, now deceased, to carry out the trusts contained in the last will and testament of **Mary E. Read**, to sell the real estate belonging to the said **Mary E. Read**, and to distribute the proceeds of the same as directed by her said will. Upon motion of the complainant, it is, this 10th day of January, 1906, ordered that the defendants, **Mary A. Bat's**, **Anna T. Harris**, **Emily T. Harris**, **Catherine H. Dodge**, **Rita Howard**, and **Elizabeth Howard**, and each of them, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order to be published once a week for three consecutive weeks in The Washington Law Reporter and The Washington Post. By [Seal] the Court. **THOS. H. ANDERSON**, Justice. A true copy. Attest: **John R. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. 2-3t

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W.

**Legal Notices.**

**Ivan Heideman, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Mary Shelton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of January, A. D. 1907; otherwise they may be by law excluded from all benefit of said estate. Given under my hand this 5th day of January, 1906. **GEORGE BURGESS**, Stewart Bldg., 6 & D sts. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,546. Administration. [Seal.] 2-3t

Filed January 9, 1906, J. R. Young, Clerk.

**W. H. Linkins, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**Patrick O'Toole v. George Thompson et als.**  
 In Equity, No. 25,908.

The object of this suit is to perfect complainant's title to original lot 16, square eighty-eight (88), in the city of Washington, District of Columbia. On motion of the complainant, by his solicitor, William H. Linkins, it is, this 8th day of January, A. D. 1906, ordered that the defendants, George Thompson, Samuel Smoot, William Thompson, trustee, James Wilson, and Thomas Wilson, and the unknown heirs, devisees, grantees, and alienees, both immediate and mediate, and the unknown heirs of such devisees, grantees, or alienees, or persons claiming under, by, or through any parties who might be so described, of all said above-named parties, and also of Andrew Sullivan, deceased, and the grantees or alienees of Ann Clephane, deceased, either immediate or mediate, or the heirs of such grantees or alienees, or any parties who claim under, by, or through any parties who might be so described, cause their appearance to be entered herein on or before the first rule day occurring three months after the first publication of this order; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published in Washington Law Reporter and The Washington Times for three successive months prior to said return day and in the following manner: once a week for three successive weeks during the first month and twice a month during each of the two succeeding months.

[Seal] By the court, **THOS. H. ANDERSON**, Justice.  
 A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk.  
 Jan. 12, 19, 26; feb. 9, 16; mar. 9, 16

**Jas. H. Taylor, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Margaret A. Wetzel, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of January, A. D. 1907; otherwise they may be by law excluded from all benefit of said estate. Given under my hand this 10th day of January, 1906. **JAMES H. TAYLOR**, 1419 G st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,978. Administration. [Seal.] 2-3t

Filed January 9, 1906, J. R. Young, Clerk.  
**Raum & Richardson, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Octavia Robey et al. v. Octavia V. Robey et al.**  
 In Equity, No. 25,571.

John Raum and Albert L. Richardson, trustees, having reported an offer by Curry E. Thrift to purchase for \$700.00 cash the property described in this proceeding, to wit: Lot 274 in Uniontown, in the County of Washington, in the District of Columbia, it is, this 9th day of January, 1906, ordered that said offer be, and hereby is, accepted, and the said sale be, and hereby is, ratified and confirmed, unless cause to the contrary be shown on or before the 15th day of February, 1906. Provided that a copy of this order be published in the Washington Law Reporter and Washington Times once a week for three successive weeks, the first publication to occur at least 30 days before the said 15th day of February, 1906. **THOS. H. ANDERSON**, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 2-3t

**Legal Notices.**

**H. T. Winfield, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**Estate of Daniel R. A. Lyons, Deceased.**  
 Administration, No. 13,333. New Series.

**ORDER OF PUBLICATION.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Thomas M. Robinson, it is ordered this 4th day of January, A. D. 1906, that notice be and hereby is given to George Lyons, a non-resident of the District of Columbia, and to all others concerned, to appear in said court on Monday, the 12th day of February, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return date herein mentioned, the first publication to be not less than thirty days before [Seal] said return date. **WENDELL P. STAFFORD**, Justice. A true copy. Attest: James Tanner, Register of Wills. 2-3t

**M. F. Mangan, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Standard Sewing Machine Company, a Corporation,**  
**Complainant, v. Samuel S. Adams, Assignee, Ernest Burgdorf, Bella A. Hollister, Annie W. Hollister, William J. Johnston, George T. Keen, and John J. Hollister, Defendants.** Equity No. 12,978.

Chapin Brown, receiver appointed in this cause, having reported that he has received an offer from John P. Earnest of twenty-five (\$25) dollars for the one-third undivided interest of John J. Hollister in lots 181, 182, 183, and 184, in Chas. E. Barnes' subdivision of lots 90 to 98 and 96 to 101 in Thos. E. Waggaman's subdivision of part of "Long Meadows," recorded in county book No. 6, page 27, in the office of the surveyor of the District of Columbia, it is, by the Court, this 8th day of January, A. D. 1906, ordered, that the said offer to purchase said undivided interest in said property be accepted and the sale of said undivided interest in said property be ratified and confirmed to said Earnest, and that the said receiver be authorized and empowered to convey the said undivided interest in the above described property, by deed, to the said purchaser, unless cause to the contrary be shown on or before the 9th day of February, A. D. 1906. Provided that a copy of this order be published in The Washington Law Reporter once a week for each of three successive weeks before said last-named day. **THOS. H. ANDERSON**, Justice.

[Seal] A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 2-3t

**THIRD INSERTION.**

**Wolf & Rosenberg, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William Henry Harrison, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of January, A. D. 1907; otherwise they may be by law excluded from all benefit of said estate. Given under our hands this 2d day of January, 1906. **LUCY A. HARRISON**, 1209 R st. N. W., **MAURICE D. ROSENBERG**, Jenifer Building. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,356. Administration. [Seal.] 1-3t

**Henry G. Thomas and James W. Beller, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Elphonse Young, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 25th day of December, A. D. 1906; otherwise they may be by law excluded from all benefit of said estate. Given under my hand this 2d day of January, 1906. **AMELIA L. YOUNG**, 1800 10th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,359. Administration. [Seal.] 1-3t

**Legal Notices.**

**Barnard & Johnson, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Emma Stahl, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 3d day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 3d day of January, 1906. GUY H. JOHNSON, Columbian Bldg.; JOHN SCRIVENER, 319 4<sup>th</sup> st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,332. Administration. [Seal.] 1-3t

**Alex. H. Bell, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of John G. Barthel, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3d day of January, 1906. KATHARINE G. BARTHEL, 221 John Marshall Place. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,348. Administration. [Seal.] 1-3t

[Filed December 11, 1905. J. R. Young, Clerk.]

**Brandenburg & Brandenburg, Solicitors**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**

**Ele W. Tuller vs. Unknown Heirs and Devisees of Isaac N. Hansbrough, Deceased.** No. 25,780, Equity.  
 The object of this suit is to construe the conveyance to Ele W. Tuller and Isaac N. Hansbrough, as vesting in the complainant the fee simple title, by survivorship, and of the sale of the real estate situated in the District of Columbia, and in square 113 and bounded and described as follows: being lots 15 and 16 in said square, bounded on the north by Road street, on the south by Stoddard street, on the east by Green street, and on the west by Washington street, said two lots fronting on Washington street, opposite Cook's Park. The defendants to this suit are the unknown heirs and devisees of Isaac N. Hansbrough, deceased. On motion of the complainant, by Brandenburg & Brandenburg, his solicitors, it is this 11th day of December, 1905, ordered that the defendants cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. This order shall be published twice a month during said three months in The Washington Law Reporter and in The Washington Post. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. Dec. 22-29, Jan. 19-26, Feb. 16-23

**R. M. Parker, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**In Re Estate of Nancy D. Bishop, Deceased.**  
 No. 10,732.

Upon consideration of the report of Samuel S. Yoder, executor under the will of Nancy D. Bishop, reporting that he had received an offer from Sophia A. Bishop, a legatee under said will, agreeing to accept the sum of \$3,000.00, in lieu of the annual legacy of \$800.00 to her, during her natural life, payable in monthly instalments, as provided in said will and as a full release and discharge of said legacy, it is, this 2d day of January, 1906, ordered that a rule be issued on all the parties in interest, to show cause on or before the 27th day of January, 1906, why the prayer of the petition should not be granted. Provided that a copy of this order be published once a week for three successive weeks in The Washington Law Reporter before said last mentioned date, and that a copy of said order be mailed to the postoffice address of all the parties mentioned in said will and in the petition for probate thereof. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. 1-3t

**Legal Notices.**

**W. C. Martin, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Robert H. Daggs, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of December, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of December, 1905. WM. J. HOWARD, 100 Mass. ave. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,285. Administration. [Seal.] 1-3t

**Fred McKee, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Annie K. McKee, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of January, 1906. JAMES W. MCKEE, 1818 North Capitol st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,368. Administration. [Seal.] 1-3t

**Michael J. Keane, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Cornelius H. Naughton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of January, 1906. MARY A. NAUGHTON, 1926 14th st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,355. Administration. [Seal.] 1-3t

**F. Elwood Pratt and Jesse H. Wilson, Jr., Solicitors**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**Patrick Fealy v. Anna Dore et al.**  
 Eq. No. 25,508.

Upon consideration of the report filed herein by F. Elwood Pratt, trustee, showing that he has sold, at public auction, sub-lot 33, in square 835, to Jane E. Murphy, for the sum of \$3,750, it is this 29th day of December, 1905, ordered by the court that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 29th day of January, 1906. Provided that this order be published once a week for three successive weeks in The Washington Law Reporter before said last mentioned date. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 1-3t

**W. J. Lambert, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Special Term for Equity Business.**  
**N. Nora Hyman v. John B. Hyman et al.**  
 Equity 25,297.

Upon consideration of the report of Wilton J. Lambert and William C. Martin, trustees, filed herein, it is, this 2d day of January, A. D. 1906, ordered that said trustees be, and they hereby are, authorized to accept the offer of Terrence J. McMahon to purchase for the sum of \$1,675 the west one-half of lot No. 55, in square 29, in the city of Washington, District of Columbia, being the property decreed to be sold in the above-entitled cause; and, further, that said sale of said lot be ratified and confirmed as reported, unless cause to the contrary be shown on or before the 5th day of February, A. D. 1906. Provided a copy of this order be published in The Washington Law Reporter and The Washington Times once a week for three successive weeks before said day. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. 1-3t

**Legal Notices.**

**Charles J. Murphy, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**Estate of Mary Sullivan, Deceased.**  
**No. 13,835. Administration.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Edwin H. Pillsbury, it is ordered this 29th day of December, A. D. 1906, that notice be and hereby is given to Michael Sullivan, Patrick Sullivan, and Eugene Sullivan, and to all others concerned, to appear in said court on Monday, the 5th day of February, A. D. 1907, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington

Post once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day. **JOB BARNARD, Justice.** Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 1-31

**Jos. H. Stewart, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**John H. Burke, Complainant, v. The Unknown Heirs**  
**at Law of Emanuel Garner and Mary Nix, Defendants.** Equity No. 25,778.

The object of this suit is to establish of record the title of complainant in fee simple by adverse possession against the unknown heirs at law of Emanuel Garner and Mary Nix, their aliases and devisees, to that parcel of land described as the east one-half of lot seven in block twenty-one in Howard University subdivision of the farm of the late John A. Smith, known as Effingham Place, in the county of Washington, as the same appears of record in the office of the surveyor of the District of Columbia, in liber District 1, folio 76½, and, it appearing to the court, upon good cause shown by affidavit filed herein, that the publication herein provided for will be sufficient, it is, on motion of the complainant, by his solicitor, Joseph H. Stewart, this 2d day of January, 1907, ordered that the defendants, the unknown heirs at law of Emanuel Garner and Mary Nix, their aliases and devisees, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that this

order be published in The Washington Law Reporter and The Record, once a week for three consecutive weeks. By the Court: **THOS. H. ANDERSON, Associate Justice.** A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. 1-31

**Paul E. Johnson, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Daniel Murphy, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of January, 1906. **CECILIA V. MURPHY, 10 I st. N. E.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 13,871. Administration. [Seal.] 1-31

**Henry S. Matthews, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of John Leetch, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 2d day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 2d day of January, 1906. **WILLIAM A. LEETCH, 1607 81st st. N. W.; FRANK P. LEETCH, 1606 81st st. N. W.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 13,866. Administration. [Seal.] 1-31

**Legal Notices.**

**Jos. H. Stewart, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Rose Simms, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 29th day of December, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of January, 1906. **JOSEPH H. STEWART, 609 F st. N. W.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 13,849. Administration. [Seal.] 1-31

**Chas. W. Darr, Richard A. Curtin, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of William Santry (also known as William Sauntry), late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 29th day of December, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of January, 1906. **CHARLES W. DARR, 707 G st. N. W.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 13,273. Administration. [Seal.] 1-31

**L. Cabell Williamson, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**L. Cabell Williamson, Mary E. Fitch, Trustees,**  
**Complainants, v. The Unknown Heirs, Alienees, or**  
**Devisees of John Davis, Henry Buford, and John**  
**H. Eaton, Defendants.** Equity No. 25,881.

The object of this suit is to perfect complainants' title to lot numbered and lettered "A" in J. B. Hollidge's subdivision of lots, in square numbered five hundred ten (510) in the city of Washington, District of Columbia, as said subdivision is of record in Book C. H. B., page 145, of the records of the office of the surveyor of said District. On motion of the complainants, it is, this 4th day of January, A. D. 1906, ordered that the defendants, the unknown heirs, alienees, or devisees of each of the following named persons, to wit: John Davis, Henry Buford, and John H. Eaton, cause their appearance to be entered herein, on or before the first rule day occurring after three months from the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published for three months, once a week for three successive weeks for the first month and twice a month for each of the two succeeding months, in The Washington Law Reporter and Washington

Post. **THOS. H. ANDERSON, Justice.** A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. Jan 6-12-19; feb 2-9; mar 2-9

**SIXTH INSERTION.**

**Harry G. Kimball, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Alice M. Peck, Complainant, v. The Unknown Heirs,**  
**Alienees, and Devisees of Appelona Whitehair,**  
**Deceased, et al., Defendants.**  
**In Equity. No. 25,782.**

The object of this suit is to establish of record the title in fee simple of the complainant to lot numbered twenty (20) in Babcock's subdivision of original lots eight (8), nine (9), and ten (10) in square one hundred and three (103) in the city of Washington, District of Columbia. On motion of the complainant, by her solicitor, Harry G. Kimball, it is, this 9th day of November, A. D. 1905, ordered that the defendants, the unknown heirs, alienees, and devisees of Appelona Whitehair, deceased, and the unknown heirs, alienees, and devisees of Justinian Mayberry, deceased, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. This order shall be published twice a month during said three months in The Washington Law Reporter and in The Washington Times.

[Seal] By the Court: **THOS. H. ANDERSON, Justice.** True copy. Test: John R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. nov 10-17, dec 8-15, jan 12-19

# The Washington Law Reporter

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WASHINGTON, D. C. - - - JANUARY 26, 1906

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## Disbarment Proceedings.

The Supreme Court of this District met in general term on Wednesday, January 24, 1906, to consider proceedings for the disbarment of John H. Adriaans, a member of the bar of this District, brought by the committee on grievances of the Bar Association. The charges presented by the committee contained three specifications of alleged unprofessional conduct on the part of the respondent, and in support thereof offered in evidence the record in three equity suits in the Supreme Court of the District. The answer of the respondent denied each allegation of misconduct. The court will again convene on Tuesday, January 30, to hear argument both as to the admissibility and the sufficiency of the evidence offered against the respondent. It is understood that the committee has several other cases under consideration, and will present them for the attention of the court when the present case is disposed of.

## Amendment to Common Law Rule 88.

The following amendment to Common Law Rule No. 88 of the Supreme Court of this District has been promulgated by the court in general term:

"SEC. 2. Upon filing a motion or demurrer in the clerk's office, in a pending cause, the attorney shall enter it upon the motion calendar, giving title, attorneys of record, number of cause, and nature of motion in brief. No mo-

tions, unless so calendared, will be entertained by the court.

"SEC. 3. Where counsel neglect to calendar any motion or demurrer at the time of filing or within two weeks thereafter, the opposing counsel may calendar the same, and have said motion disposed of upon its merits or dismissed for want of prosecution.

"SEC. 4. Motions remaining upon the calendar for two successive motion days and having been called and not disposed of may be dismissed."

## Subdistricts of Justices of the Peace.

The Supreme Court of this District, sitting in general term, has promulgated an order rearranging the boundary lines of the subdistricts presided over by justices of the peace. This rearrangement is made necessary by the reduction in the number of justices from ten to six. The new subdistricts are as follows, the center of the street being intended wherever a street is mentioned as a boundary line:

Subdistrict No. 1, Charles S. Bundy—Beginning at the intersection of Fourth and D streets northwest; thence north with Fourth street to F street north; thence west with F street to Fifteenth street west; thence north to Pennsylvania avenue; thence westerly along Pennsylvania avenue to Twenty-third street west; thence north with Twenty-third street to Rock Creek; thence northward with Rock Creek to the District line; thence southward with the District line to the Potomac River; thence southeast with the Potomac River to B street extended west; thence east with B street to Sixth street west; thence north to D street and east to the place of beginning. The office will be located in the Columbian Building.

Subdistrict No. 2, Samuel C. Mills—Beginning at the intersection of Tenth and F streets northwest; thence west with F street to Fifteenth street west; thence north to Pennsylvania avenue; thence westerly along Pennsylvania avenue to Twenty-third street west; thence north on Twenty-third street to Rock Creek; thence northward with Rock Creek to the District line; thence northeast and southeast along the District line to Brightwood avenue; thence south with Brightwood avenue to Rock Creek Ford road; thence southward along Piney Branch road, Fourteenth street road, and Fourteenth street to Florida avenue; thence easterly with Florida avenue to Tenth street west; thence south with Tenth street to place of beginning. The office will be located at 1205 G street northwest.

Subdistrict No. 3, Thomas H. Callan—Beginning at the intersection of Fourth and D streets northwest; thence north on Fourth street to F street; thence west on F street to Seventh street west; thence north with Seventh street to New York avenue; thence northeast with New York avenue to North Capitol street; thence north with North Capitol street to Florida avenue; thence northward with Lincoln road, Harewood road, and Third street extended to the Bates

road; thence easterly with the Bates road to the Sargent road; thence south to the Bunker Hill road, and easterly with the Bunker Hill road to the District line; thence southeast and southwest with the District line to the Benning road; thence westerly with the Benning road to Fifteenth street east; thence southwest with Maryland avenue to D street north; thence west with D street to the place of beginning. The office will be located at 627 F street northwest.

Subdistrict No. 4, Luke C. Strider—Beginning at the intersection of John Marshall Place and D street northwest; thence south with John Marshall Place to Pennsylvania avenue; thence southeast with Pennsylvania avenue to First street west; thence south with First street to B street south; thence east with B street to First street east; thence south on First street to Virginia avenue; thence southeast with Virginia avenue to Ninth street east; thence south with Ninth street to the Anacostia River or Eastern Branch; thence southerly with the Anacostia and Potomac rivers to the District line; thence northeast with the District line to the Benning road; thence westerly with the Benning road to Fifteenth street east; thence southwest with Maryland avenue to D street north; thence west with D street to the place of beginning. The office will be located in the Fendall Building.

Subdistrict No. 5, Lewis I. O'Neal—Beginning at the intersection of John Marshall Place and D street northwest; thence south with John Marshall Place to Pennsylvania avenue; thence southeast with Pennsylvania avenue to First street west; thence south with First street to B street south; thence east with B street to First street east; thence south with First street to Virginia avenue; thence southeast with Virginia avenue to Ninth street east; thence south with Ninth street to the Anacostia River or Eastern Branch; thence southwest with the Anacostia River to the Potomac River; thence with the Potomac River northwest to B street north, extended; thence east along B street extended, and D street to Sixth street; thence north on Sixth street to D street north, and thence east to the place of beginning. The office will be located at 456 D street northwest.

Subdistrict No. 6, Robert H. Terrell—Beginning at the intersection of Seventh and F streets northwest; thence north with Seventh street to New York avenue; thence northeast with New York avenue to North Capitol street; thence north with North Capitol street to Florida avenue; thence northward with Lincoln road, Harewood road and Third street extended to the Bates road; thence easterly with the Bates road to the Sargent road; thence south with the Sargent road to the Bunker Hill road; thence easterly with the Bunker Hill road to the District line; thence northwest with the District line to Brightwood avenue; thence south with Brightwood avenue to Rock Creek Ford road; thence southward along Piney Branch road, Fourteenth street road and Fourteenth street to Florida avenue; thence easterly with Florida avenue to Tenth street west; thence south with Tenth street to F street north; thence east to the place of beginning. The office will be located at 911 G street northwest.

#### MR. JUSTICE MARTIN F. MORRIS.

Presentation by the Bar of the District of Columbia.

A special session of the Court of Appeals of this District was held on the afternoon of December 22, 1905, for the purpose of affording to the bar of the District an opportunity of offering a tribute of their respect and affection to Mr. Justice Morris, who recently retired from the court. There were present the Chief Justice, Mr. Justice Duell, and Mr. Justice Morris, retired. Mr. Justice McComas was, much to his regret, compelled to be absent from the city and could not attend the session. The proceedings of the session were as follows:

The CHIEF JUSTICE. The court has been convened today for the purpose of giving the bar an opportunity to offer this tribute to our brother, Mr. Justice Morris, who has lately retired. I am requested by Mr. Justice McComas to say that he was compelled to go west for the holidays, and is, therefore, much to his regret, not able to be present at this special session of the court.

Mr. WORTHINGTON. May I have the permission of the court to address a few words to Mr. Justice Morris upon a personal matter?

The CHIEF JUSTICE. The court will be pleased to hear you.

Address of Mr. A. S. Worthington.

Mr. WORTHINGTON. Judge Morris, I am requested by the committee which has charge of the arrangements for this meeting to read first a letter which has just been received from Chief Justice Alvey, who was invited to be present on this occasion. He says:

"GEORGE E. HAMILTON, Esq.

My Dear Sir: I am in receipt of yours of the 16th instant, inviting me to be present on Friday next, in Washington, at a memorial presentation by the bar to Mr. Justice Morris, recently retired from the bench of the Court of Appeals of the District of Columbia. I am delighted to hear of this contemplated mark of honor to and high appreciation of the judicial service of Mr. Justice Morris, and I exceedingly regret that, owing to my very infirm condition of health, I shall not be able to be present on that very interesting occasion.

"From the time of the organization of the Court of Appeals of the District to the time of his retirement from the bench of that court, the labors of Mr. Justice Morris were constant and untiring, and his work was uniformly executed with conspicuous care and ability. The reported decisions of Justice Morris will stand as lasting monuments of his learning and fidelity in the discharge of the duties of his high judicial office. In the retirement of Justice Morris the bar and the public sustained a great loss.

"I cordially join with the members of the bar in tendering to Justice Morris sincere good wishes for a long life and good health. I am,

Very sincerely yours,  
A. H. ALVEY."

Judge Morris, when the gentlemen who had charge of this matter requested me, a few days ago, to be the spokesman of the bar on this occasion, I felt that they might have made a



selection of one who would have presented what is to be said to you in a better way than I can do it; but I also felt that they could not have selected one who would have been more sincere in what he should say. At that moment there came to me the memory of an occurrence which happened fifteen years ago, concerning which, in view of your connection with it, and for the benefit of those who do not remember it or were not here at the time, I think it may be fitting to say a few words. It was the beginning of the movement which resulted in the creation of this court.

The first meeting of the members of the bar to take into serious consideration the question of the reorganization of the judicial system of the District took place in your office. There were present about a dozen members of the bar, who considered the difficulties under which we labored in view of the existing state of affairs, which difficulties grew entirely out of the system and had no reference at all to the personnel of the court. It was decided at that meeting that a committee of two should be appointed to prepare the outlines of a scheme in accordance with the views of the majority of those present. My brother Henry E. Davis was one member of that committee, which put on paper for the first time certain suggestions for the organization of this court, which are substantially those found in the organic act as it now stands.

At the next meeting Mr. Morris was appointed chairman of a committee which was to prepare a bill to be submitted to the bar association. It may not, perhaps, be inopportune to state what difficulties he, and those associated with him, had in bringing about the reorganization of our judicial system and the creation of this court. At the first meeting of the bar association, when the matter was brought up, we found a considerable minority of the members opposed to it, led by such able and influential men as Walter D. Davidge, Enoch Totten, and Henry Wise Garnett, whose voices are now stilled, and one venerable member of the bar who fortunately is still with us, but whose name I will not mention on account of his well-known modesty, nor will I otherwise designate to whom I refer.

The bar association favored the bill, and we were, as I remember, two years in getting it passed. There is one thing I think I ought to mention, although it would take too long to go through all the details of that struggle, as a warning to the members of the bar about signing papers without knowing what is in them. The committee went before the judiciary committee of the House, presided over by that eminent gentleman whom you (addressing Chief Justice Shepard) no doubt knew well, Judge Culberson. We presented our reasons for the passage of the bill creating a Court of Appeals, and we were asked whom we represented. We informed them that we represented the Bar Association of the District of Columbia. They inquired of us as to the constituents of that body, and we told them that most of the leading members of the bar and a great majority of the active practitioners at the bar belonged to it. That seemed to satisfy them. But when our friends of the opposition came to address the committee, they presented

a petition signed by a majority of the members of the bar association asking the committee not to favor the bill. Another meeting of the bar association had to be called, and it then appeared that the petition had been signed by most of those whose names were appended to it without fully appreciating the effect of what they were doing. Judge Culberson in the House, and Senator Hoar in the Senate, conspicuously, favored the bill, and it finally passed and became a law.

It was very fitting, therefore, when President Cleveland came to consider what appointments he should make to this court, that he should select one who was qualified in so many other respects, and one at whose office the movement which resulted in the creation of the Court of Appeals was started.

It is a little hard to tell just how much or what should be said to you on this occasion. When you want to abuse a man you can properly do it to his face, but there are things of an opposite kind which you want to say to him which it is sometimes difficult to say when he is present. But let me say, referring to what Chief Justice Alvey has written, it is the universal sentiment of the bar of this court that as a judge your conduct has been characterized by an eminent degree of ability and fairness, and that the robe which you have taken off and laid down for your successor is one which he may hold up to the sun and find no stain upon it. I would say more in this direction, but I can not now.

There is also one thing in your history which, whether you desire it or not, I feel bound to say. Judge Morris, we all know that, in your early manhood, you had seen fit to choose as your vocation in life a different profession. We know that, with the scholarly instincts which you had, and the student life which you had led, it was your desire to become a member of the priesthood of the church to which you belong, and that when the moment had almost arrived when your choice of a vocation in life would have been irrevocably fixed, by reason of circumstances over which you had no control it became necessary for you to give up that cherished wish on account of those who were near and dear to you, and you gave up the cloister for the court, gave up the quiet life which you had intended to live, and came into this forum, which is a constant daily struggle, from the beginning to the end. It may be you think your life has not been what it should have been. But I am reminded, sir, of what Washington Irving has so quaintly told about an honest Dutchman who owned a tract of land just outside of New York City, when New York City was but a small town. He dreamed one night that buried in his ground was a pot of gold. The next day he began to dig for it. He continued to dig for it, more and more possessed of the opinion that the gold was there. People laughed at him; boys jeered at him. This so offended him that he built a wall around his lot, and there, for many months, and even for years, he continued to dig for the gold, keeping himself hidden from the view of his neighbors. Years afterwards, when the town had grown far beyond his lot, somebody came within that enclosure and offered him and paid him more for his land than he had

ever expected to find buried within it. So I may say of your life, that while your cherished wish of preaching the doctrines of Christianity failed of accomplishment by reason of what happened to you in your early days, yet, in view of what you have done, in view of the fact that you have devoted your life to those who, you thought, had a right to call upon you to do so, in view of the success which has attended your efforts, of the comfort which you have given them, and the enjoyment which they have now in your presence and in your life, I think all men may say: Here is one who was prevented from preaching the gospel of Christianity by word of mouth; but behold, he has preached it in a better way, by the force of a great example!

There is more I would like to say, but I can not say it in this public place. I want you to understand one thing, Judge Morris, that what we are doing here today is not the work of a few members of this bar. It is not the result of any effort that has been made by those who thought your retirement from the court should be taken notice of by the bar; but it represents the spontaneous and general feeling of the bar of the District of Columbia. The difficulty which the committee having charge of this matter had was not to get it started, but to stop it. I think I may say in conclusion, on behalf of the bar of this District generally, that we are sorry you made up your mind to leave the court; that we wish you a long life and the enjoyment of the comforts due to one who has lived such a life as you have and who now seeks in retirement to enjoy himself during the rest of his days. I want to tell you also that we are not entirely satisfied to express our good wishes in words only; but we wish you would take this token, that you may keep it in your house, and that as "beside the Silent Sea" you "wait the muffled oar," you may from time to time, as you look upon it, remember that, whatever you may think as to whether your life has been all it should have been, we recognize the fact that it has been a successful one, an honorable one, and one which entitles you to the thanks and good wishes of the bar and to the thanks and good wishes of the community.

I wish you, on behalf of the bar of this District, a Merry Christmas and a Happy New Year, and many returns of the same.

#### Response of Mr. Justice Morris.

Gentlemen, I scarcely know how to express my thanks to you for this manifestation of your kindness and goodwill to me. It has taken me somewhat by surprise that you should have thought of honoring me in this way. To say that I am very grateful to you would but feebly express my appreciation of your generous sentiment for the work which I have endeavored faithfully to perform in the midst of this community. For I can not flatter myself that it is for myself personally, so much as for the court of which I have had the honor for upwards of twelve years to be a member, and for the services which that court has earnestly striven during all those years to render to you and to the public, that I have been made this day the recipient of this testimonial of your esteem and regard.

When, upwards of thirteen years ago, the

members of the bar of this District began the agitation for the improvement of the judicial system existing at the time, an agitation which resulted in the establishment of the Court of Appeals, and I had the honor to be appointed as the subcommittee to draft the bill in which our views were ultimately embodied, I little dreamed that I would be one of the first judges of the court so proposed to be created. Indeed, nothing was further from my thoughts. I had never held or sought office of any kind. I was content to continue for life in the practice of my chosen profession, laboring with you in the arena, and solicitous only to perform the duties of that profession as faithfully and as conscientiously as I knew how to do. And when the appointment came to me, unsought and undesired, to be one of the justices of the court, it was not without considerable hesitation and some reluctance that I accepted the proffered honor. I may be permitted to say that its acceptance involved no little pecuniary sacrifice. But it was a position of great honor that was offered to me, and I was not insensible of that honor; and I deemed it my duty to my fellow-citizens of the District of Columbia, and to the cause of judicial reform for which I had labored, not to refuse it.

Perhaps you will pardon me for a word or two of explanation as to the constitution of the original membership of the Court of Appeals. That tribunal, newly created, I knew to have been regarded by the President, to whom was confided the appointment of its members, not merely as a local court, but as a great Federal tribunal, intended to deal with questions as broad as the Federal Union; and we know that the courts of the District of Columbia do deal largely with Federal questions of the greatest importance. Consequently he sought for its membership two men who would be broadly representative of the Federal Union, and one who would represent the District of Columbia—if it be proper to use the term *representation* in reference to a court of justice. Whatever we may have thought at the time of the action of the President in going outside of the District for any members of a court which we were disposed, perhaps too narrowly, to regard as a local institution, I think we can all agree today that there was no mistake committed in the selection of the honored Chief Justice of Maryland to be our Chief Justice, and in the appointment of the ablest lawyer of the great Empire State of Texas to be his associate. Of course, we could not have anticipated how greatly both would cause themselves to be admired and beloved by this entire community. We did not have the gift of fore-knowledge.

It fell to my lot to be the representative of the District of Columbia on the court, and I felt that my position was greatly more trying than if I had been merely one of three persons selected from our local bar. How well or how poorly I have performed the trust that was then reposed in me, how well or how ill I have answered the expectations of this community, it is for you, not for me, to determine. This manifestation of yours today would indicate that, at least in your opinion, I have not been found entirely wanting. I can say truly and conscientiously that during all these years for



which I have occupied a seat on the bench, my best efforts have been devoted towards bringing the bench and bar into a closer union with each other, and making the Court of Appeals of the District of Columbia a model tribunal, to which the public could ever look with confidence for the prompt and efficient performance of its duty, for the faithful administration of justice, and at the same time for the utmost courtesy and consideration for all of the members of the bar, young and old alike.

I have always assumed that courtesy towards the members of the bar should be the invariable characteristic of one in judicial position, to say nothing of the fact that it should be the constant characteristic of any gentleman towards another under all circumstances. I have always assumed that courts and judges have much, very much, to learn from argument, and that it is the function of the members of the bar to *instruct*—I use the word advisedly—the courts and judges in the law of each particular case before them. It is true we are often told that we know the law in any given case. But the fact is that we know it very much better after we are told of it by the members of the bar, and it is their function in the administration of justice to instruct the judges in the law, and to give to them in proper manner the result of their own laborious investigation.

Gentlemen, I trust that I may be excused for a word of personal reference to my honored associates on the bench. We were all strangers to each other when we first met to organize the court. Our late honored and revered Chief Justice was, of course, well known to all of us by reputation as the Chief Justice of Maryland for many years. Only to a few of us was he known personally; and my own personal acquaintance with him had been exceedingly slight. Our present Chief Justice, most worthy to be his successor, was well and favorably known through all the length and breadth of the State of Texas; but none of us in this District had any personal acquaintance with him. I have often recalled with pleasure that many solicitous inquiries were addressed to myself at the time as being supposed to have some knowledge of him, and that I indulged in some optimistic prognostications in regard to him. Gentlemen, those prognostications have fallen far short of the reality.

I could not trust myself to speak of the more than kindly relations that arose between us, of the love and affection that characterized our intercourse for twelve years, without seeming to be extravagantly eulogistic. Suffice it to say that in my honored associates I have ever found men of lofty ideals and noble purposes, men with whom it was a delight to be associated, and men from whose association I learned more law than I ever knew when I went upon the bench. The warm friendship which sprang up between us has been a source of enjoyment to me for which I am unable to find adequate expression in words. I think I am not unduly disclosing any of the secrets of the conference room when I say that neither inside nor outside of that room has ever an unkind word passed between us, and that there has never existed a court of which the members had more respect for each other's opinions, or in which the discussions antecedent to determi-

nation were conducted in a more kindly and deferential spirit and with a more sincere and earnest purpose to subserve the ends of justice.

With the retirement of Chief Justice Alvey, now just about a year ago, came the first break in the membership of our court, and a reorganization became necessary. Gentlemen, I will only say here that in that reorganization, so far as it went, there was in my humble opinion no mistake made by the President of the United States. And this I think will be appreciated more and more as the years go by.

Gentlemen, I appreciate that it is a serious and a solemn thing to retire from the arena in which our lifelong activities have been exerted. But it would seem to be better to retire gracefully than "to lag superfluous on the stage," when, perhaps, the faculties have become impaired by the growing infirmities of age, and the imperfect performance of duty becomes a hindrance and an obstacle to the public business. At all events, it is the policy of our law to invite us to retire when we have served our time, although it may not compel us to do so. It is the fact that others become conscious of our mental failure much sooner than we do ourselves, and the public service is entitled to the best instrumentalities which it can procure. "The octogenarian chief, blind old Dandolo," of whom the poet sings, and who, at the age of nearly ninety, stormed the walls of old Byzantium at the head of his gallant Venetians, has left few or no imitators. Age may bring an increase of wisdom, but not of strength, and the combination of both is required for effective judgment.

Gentlemen, again I thank you most sincerely for your kindness and good-will to me. I believe I may flatter myself that I have never ceased to regard myself as one of you—one temporarily placed in position to be of service to you in the arbitration of the legal controversies which you were called upon to solve. I believe that on the bench I have had the good fortune to be drawn nearer to you in the ties of a closer friendship and mutual respect. From the elders among you I have always had a generous sympathy that has lightened my labors when they were most onerous. I have seen grow up among you a younger generation, with the training of many of whom I have had the pleasure to be associated. And with elders and juniors alike it has been my good fortune to maintain the most pleasant relations. If I regarded these relations alone, I could have wished to perpetuate the conditions under which they arose and were cemented; for nothing in life is more satisfactory than the good-will and the sincere friendship of those with whom we are brought into daily contact.

It was not without mingled feelings of pleasure and regret that I relinquished my place upon the bench. Of course, I knew that the daily association with you, which I had enjoyed for so many years, would be broken—broken forever. But duty imperatively demanded the step which I took; and I could not well have done otherwise than as I did, although I was earnestly urged by several friends to postpone my resignation. There were personal considerations, likewise, which made the step in every way expedient.

I may still hope, gentlemen, to live several years among you. Retirement on a full salary is notoriously conducive to longevity. I may hope to live among you, not as a drone in the community, but as an earnest worker within the narrow sphere to which my energies must be restricted; and I trust that my supposed leisure time may not be entirely useless or without benefit. Certainly I shall retain my interest in the welfare of the bench and bar of the District—in the welfare of our community and of our beloved country.

Gentlemen, the words of kindness and goodwill which you have addressed to me to day through your spokesmen, even more than the beautiful specimen of the silversmith's art with which you have been pleased to compliment me, have moved my heart to a greater extent than I had supposed myself capable of being; and I shall treasure those words and this testimonial during the years that are to come as only the treasures of the heart can be hoarded. The years that are to come can scarcely be many in any event. I am aware that I am entering upon the brief twilight of a winter day, and that the night is near, and the darkness, and that but few stars illumine the path down into the Dark Valley. But assuredly it will cheer the darkness of that hour to feel that, in the opinion of those most competent to judge, I have performed, with reasonable satisfaction to them, the duties that were imposed upon me and that concerned them most.

Gentlemen, again I thank you with all my heart.

**THE CHIEF JUSTICE.** Gentlemen, speaking for myself as a member of the original court and also for my brother, Mr. Justice Duell, I wish to express our hearty appreciation of the tribute which has been paid by the members of the bar today to the worth and works, public and private, of our retired brother Morris. I want to say in addition, on my own behalf, that I can never forget the kindly welcome which I received from him upon my arrival here, a stranger.

During twelve years of constant association with Mr. Justice Morris, on the bench, in the consulting room, and in our homes, my respect for his ability and learning, my confidence in the integrity and purity of his life, and my affection and love for him have constantly increased, and will remain with me as long as life lasts.

The court will take pleasure in having entered upon its minutes the proceedings of this special session.

The court thereupon adjourned.

A railway company which has made an arrangement with a transfer company to furnish at its passenger station all the vehicles necessary for the accommodation of the passengers arriving there on its trains, or on the trains of other railroad companies using the station, is held, in *Donovan v. Pennsylvania Co.*, U. S. Advance Sheets, 91, to have the right to exclude from the station and depot grounds all other hackmen or cabmen seeking entrance for the purpose of soliciting for themselves the custom or patronage of passengers.

## Court of Appeals of the District of Columbia.

**VIRGINIA DANGERFIELD ET AL.,  
APPELLANTS,**

**v.**

**CHARLES P. WILLIAMS ET AL.**

**ADVERSE POSSESSION; COLOR OF TITLE; VOID DEED;  
ESTOPPEL.**

1. One who enters under color of title, by deed or other written document, and occupies the land, acquires in law actual possession to the extent of the boundaries contained in the writing, and this though the title conveyed to him by the deed is good for nothing.
2. A deed conveying a tract of land containing more than two acres, to be used as a graveyard, although void under section 34 of the Maryland Bill of Rights, in force in this District, constitutes color of title; and where the grantee therein enters into possession of the land, and he and those claiming under him continue in possession thereof, using the same as a graveyard, for more than eighty years, the title to said land will become vested in them by adverse possession.
3. In a proceeding in equity by the successor in interest of the original grantee to quiet his title by adverse possession, and for a sale of the land, the heirs at law of the grantor being made defendants, a compromise agreement was entered into by all the parties, including appellants, for a sale of the land and distribution of the proceeds, in certain proportions, to complainant and to the heirs at law of said grantor. *Held*, that appellants could only claim an interest in the fund as heirs at law of said grantor, and were estopped by the agreement from claiming a larger portion of the fund as devisees under the will of one of the two heirs at law of the original grantor.
4. *Held*, further, that the grantee in said deed having acquired a title by adverse possession at the time of the execution, by the son of the grantor, of the will under which appellants claimed, no title to said land or any interest therein passed under said will.

No. 1577. Decided January 4, 1906.

**APPEAL** by exceptants from a decree of the Supreme Court of the District of Columbia, in Equity, No. 14,829, overruling exceptions to a report of the auditor and ratifying and confirming the same. *Affirmed*.

*Mr. James E. Padgett, Mr. Edwin Forrest, and Mr. Henry E. Davis* for the appellants.

*Mr. T. Percy Myers* for the appellees.

Mr. Justice DUELL delivered the opinion of the Court:

This appeal is taken from the decree of the Supreme Court of the District of Columbia, which overruled certain exceptions made by appellants to the report of the auditor, and ratified and confirmed it.

To a proper understanding of the case, and for the purpose of an intelligent consideration of the assignment of errors, a full statement of the facts is necessary. These facts are carefully and correctly recited in the auditor's report, and are thus stated by him:

"Ann Cassanave executed on the 25th of March 1808 a deed of conveyance to the Right Rev. John Carroll, bishop of Baltimore, to his heirs and assigns a certain parcel of land in the District of Columbia containing two acres three rods and twelve perches for the use of the Roman Catholics of the city of Washington as a grave-yard. The deed reserves to the grantor one-thousand square feet for the interment of certain persons designated in the conveyance. The grantee entered into possession of the land

and it was used by the Catholics of Washington as a grave-yard until 1889 when the Commissioners of the District of Columbia by due proceedings procured the condemnation of a portion or strip of the said land for the extension through the tract of 'R' street north. In that proceeding damages for the taking of the said land were assessed in the sum of \$3,500.00. This being adversely claimed by James Gibbons, cardinal of the see of Baltimore in whom by mesne conveyances the title of the said John Carroll became vested, and the heirs of the said Ann Cassanave, the said Commissioners filed in equity cause No. 12,143 a bill of interpleader praying the court to require the claimants to interplead their rights in the premises. Pending the proceedings in that cause, Cardinal Gibbons filed his original bill in the present case setting forth the original conveyance and the possession and use of the land for the purposes of a grave-yard continuously from the date of the conveyance to the time of the filing of the said bill excepting the portion taken by the Commissioners as above stated, and for certain reasons and conditions set forth in the bill, he prayed the authority of the court to remove all the bodies then remaining interred in the said grave-yard; to sell the land and to procure another tract for the reinterment of the bodies to be removed. All of the parties claiming as or through heirs-at-law of the said Ann Cassanave were made defendants to this bill and appeared and answered. The bill was filed on the 28th of March, 1893.

"Thereafter the defendant filed their cross-bill against the complainant setting forth the original pleadings and asserting that the original conveyance to John Carroll was void under the 34th section of the declaration of rights of Maryland and in force in this District at the time of the conveyance, for the reason that it attempted to convey for the use of a grave-yard a piece of ground containing more than two acres whereby the title to the land remained in the said Ann Cassanave and descended to her heirs at law.

"The cross-bill averred that the use of the land as a grave-yard had been abandoned by reason whereof the title if any conveyed by the said original deed reverted to the defendants as heirs-at-law of Ann Cassanave or as claiming through her heirs-at-law. Answers were filed to the cross-bill and the cause was at issue.

"About the 10th of December 1894 a stipulation was made between the parties to the cause containing the following agreements:—

"First. The defendants relinquished all claim to the damages awarded for the extension of 'R' street.

"Second. That the bodies remaining in said grave-yard and the tomb-stones should be removed by the complainant at his own cost and expense.

"Third. That the property should be sold by trustees named in the stipulation and the net proceeds distributed three-fifths to the complainant and two-fifths to the defendants Williams and Young, trustees for the heirs-at-law of Ann Cassanave to be by them distributed pursuant to the terms of their trust, to said heirs-at-law as their interests might appear.

"On the 15th of November 1889 the heirs-at-law of Ann Cassanave executed a deed conveying

to the said Williams and Young the land and premises in question in trust to sue for and defend the right and title of the grantors in and to the said land and premises and to recover possession of the same or the proceeds thereof.

"Subsequent to the order of reference the parties interested in the subject-matter entered into a stipulation as to the facts and conditions affecting the issue in the reference. After referring to the conveyance from Ann Cassanave to Bishop Carroll, it is agreed that the land therein described was used as a grave yard until the year 1889. The relationship of the defendants as the heirs-at-law of the said Ann Cassanave are also set forth and agreed upon in the said stipulation and the several deeds of conveyance and the will of Peter Cassanave form a part of the stipulation.

"The defendant Virginia Dangerfield and Johanna Dangerfield Jackson claim that they are entitled to receive one-half of the fund in the hands of the trustees, Young and Williams, as the sole heirs-at-law of Mary Elizabeth Dangerfield (Howle), to whom Peter Cassanave one of the two heirs-at-law of Ann Cassanave devised his interest in the property. The defendants also claimed a further interest in the fund as heir-at-law of the said Ann Cassanave."

Upon this state of facts the auditor in this proceeding, which was one wherein he was appointed to state a distribution of the funds which came into the hands of Charles P. Williams and Joseph N. Young, trustees, made the findings, conclusions, and report which were excepted to, the exceptions overruled, and the report confirmed by the court. The fund was the two-fifths received by Williams and Young, as trustees, as the result of the sale of the property, the title to which was in controversy, and which was sold under the terms of the stipulation entered into by all of the parties to the suit brought by Cardinal Gibbons in 1893.

The auditor's conclusion from the facts and the law applicable thereto resulted in his report that these appellants could not claim any part of the fund by reason of the devise contained in the will of Peter Cassanave, and stated the distribution of the fund to the heirs at law of Ann Cassanave. His conclusions, so far as they were excepted to, and the exceptions thereto which were overruled, will be considered in detail, as they are the basis for the assignment of errors. These are as follows:

The court erred in confirming the report of the auditor and in holding and finding that on December 10, 1894, the date of stipulation, the land in controversy was not abandoned for the purpose of a graveyard; and in holding and finding that the possession of the land by the plaintiff Gibbons during the time alleged caused a complete and perfect title against all persons, not under some legal disability; and in holding and finding that the statute of limitations affected the relation of the parties in reference to the fund in question; and in holding and finding that the stipulation of December 10, 1894, estopped these exceptants from claiming a one-half interest in fund by virtue of will of Peter Cassanave; and in holding and finding that Peter Cassanave had no estate or interest in said property subject to

devise, and that appellants can not claim any part of fund by reason of devise; and in holding and finding, and so ordering distribution of fund, that the appellants were only entitled to one-half of one-sixth to each of them; and in holding and finding that at time of commencement of suit, and at time of conveyance to trustees, and at time of stipulation of December 10, 1894, and before and ever since the said times the appellants had not claimed a one-half interest in said real estate under will of Peter Cassanave; and in not holding and finding that the appellants were entitled by reason of will of Peter Cassanave to one-half of fund in hands of trustees.

1. There is no ground for claiming error in the finding that on December 10, 1894, the land in controversy had not been abandoned for the purpose of a graveyard. The stipulation of settlement bearing that date, which was signed by Cardinal Gibbons, the complainant in the original suit, by his solicitors; signed by the trustees, Williams and Young, and by the other defendants, including these appellants, by their solicitors, is a complete answer to the claim of error in this particular. The second clause recognizes the fact that the land was still used as a graveyard, for it provides that the bodies interred therein and the tombstones shall be removed by Cardinal Gibbons at his own expense. It is further admitted by these appellants, in the stipulated statement of facts in the present proceeding, that the land in question was continuously used as a graveyard until the year 1889. There is nothing which tends to show a disuse between 1889 and 1894. That interments had ceased several years before does not prove disuse. As long as the bodies remain therein, and in the absence of any affirmative proof that the land was used for other purposes, it was a graveyard. To hold otherwise because of a failure to continue interments would make Cardinal Gibbons, and those whom he had succeeded, holders beyond any question of the land under an adverse possession covering a period from 1863 to 1889, a long enough period to create a perfect title against these appellants, who are not shown to have been for any portion of that time under any legal disability. It is true that in 1889 the Commissioners of the District of Columbia extended "R" street through the graveyard, but this did not affect the remainder of the land, and the stipulation before referred to surrendered any claim these appellants might have had to that fund, as it expressly consents that Cardinal Gibbons might receive it.

2. It is next insisted that the possession of the land by Cardinal Gibbons, and those under whom he held, was insufficient to vest a complete and perfect title against all persons, not under some legal disability, and that it was error to hold otherwise. From 1808, the date of the deed from Ann Cassanave to Bishop Carroll, he, and his successors in office, were in open and notorious possession down to at least 1894, and the right to such possession was not claimed by any one in any way down to 1889, a period of over eighty years.

We may concede and not question that the deed from Mrs. Cassanave to Bishop Carroll was void by reason of it being within the prohibition contained in section 34 of the Maryland

Declaration of Rights. Conceding that Mrs. Cassanave the next day after the delivery of the deed had the right to vacate it, the fact remains that she never took any step in that direction. Her immediate heirs, one of whom was her son, Peter Cassanave, under whose will these appellants claim a one-half interest in the fund, though living until March, 1860, never made any attempt to regain possession of the land in question. It is quite suggestive that Peter Cassanave, by his will executed in 1856, expressed the desire to be buried by the side of his beloved mother in this very graveyard. It further appears that, after Peter Cassanave's death in 1860, the mother of these appellants in no way claimed that the title of the land in question became vested in her under the terms of her uncle's will. It does not appear that the appellants, after the death of their mother, made any attempt to obtain title to any part of, or interest in, the land in question. In fact, no heir at law of Ann Cassanave at any time made any attempt to evict Bishop Carroll, or any of his successors in interest, or to show title in themselves to the land. That they made claim to the land at some time, presumably after a portion of the land was taken by the District for street purposes in 1889, appears from the bill filed by Cardinal Gibbons in March, 1893.

Unless there is something peculiar to this case the title to the land by adverse possession became vested in Cardinal Gibbons, or his predecessors in interest, long before Peter Cassanave executed his will under which these appellants claim a one-half interest in the fund. The possession under color of title began in 1808, the will of Peter Cassanave was executed in 1856, and he died in 1860. Long before either date the right of Peter Cassanave, or any of the heirs of Ann Cassanave, to entry upon the land in question had determined. The rule applicable to adverse possession in the District of Columbia and in Maryland, in all ordinary cases, has been repeatedly and uniformly laid down by this court, by the Supreme Court of the United States, and by the Court of Appeals of Maryland. *Johnson v. Thomas*, 23 App. D. C., 150; 32 Wash. Law Rep., 69; *Columbian University v. Taylor*, 25 App. D. C., 131; 33 Wash. Law Rep., 181; *Sharon v. Tucker*, 144 U. S., 533; *Gump v. Sibley*, 79 Md., 165.

It is urged by appellants that the deed from Ann Cassanave to Bishop Carroll was absolutely void under the Maryland Bill of Rights, and that for the same reason any claim of adverse possession is not well founded. The argument is that the policy of the State in enacting article 34 of the Bill of Rights was to prevent religious bodies from acquiring real estate; that this article was not enacted for the benefit of the private individual—the owner of the land—but for the protection of the State; and that it follows that if such bodies are prohibited from acquiring land by deed or contract they are prohibited from such acquirement by adverse possession. The argument is plausible, but not well founded. The article referred to, so far as it applies to real estate, reads:

"That every gift, sale or devise of lands to any minister, public teacher or preacher of the gospel, as such, or to any religious sect, order or denomination, or to or for the use or benefit

of, or in trust for, any minister, public teacher, or preacher of the gospel, as such, or of any religious sect, order or denomination, . . . without leave of the legislature, shall be void: except always any sales, gifts or devises of any quantity of land not exceeding two acres for a church, meeting or other house of worship, and for a burying ground, which shall be improved, enjoyed or used only for such purpose or such sale, gift, lease or devise shall be void."

The deed given by Ann Cassanave to Bishop Carroll was clearly good for nothing, being in contravention of said article 34 in that it attempted to convey more than two acres of land. Ann Cassanave had the right to treat it as null and void. *Grove v. Trustees, &c.*, 33 Md., 451, 454. Notwithstanding that the deed was good for nothing, it appears that Bishop Carroll at once entered into possession under color of title and that title was held upwards of eighty years. His holding comes within the general rule repeatedly laid down by the Maryland Court of Appeals and thus clearly stated in *Hoye v. Swan's Lessee*, 5 Md., 237, 248: "but if one enters under color of title, by deed or other written document, and occupies and improves the land, he acquires in law actual possession to the extent of the boundaries contained in the writing, and this though the title conveyed to him by the deed be good for nothing."

In *Gump v. Sibley*, *supra*, it was asserted that a deed was void in view of the article above quoted, because it was not stated upon the face of the conveyance that it was to be used as a burial ground. It appears that one Jourdan conveyed certain land to the trustees of St. John's German Catholic Church of Baltimore. The land contained less than two acres and was purchased for and used as a burial ground. The court said:

"If the decision in *Grove et al. v. Trustees of the Disciples, &c.*, 33 Md., 451, is to be construed as establishing the right of a grantor who has received full and valuable consideration, to vacate his deed, because it did not express on its face the lawful purpose for which the property was bought, this right vested in Jourdan as soon as he had delivered the deed. Consequently the Statute of Limitations commenced running against him on that very day, and has been running for more than sixty years. The deed, even if void could not be less than *color of title*, and the entry under it would constitute adverse possession to the extent of the boundaries contained in it; and a continuance of this possession for twenty years would perfect the title against all persons not under legal disabilities."

If adverse possession can be invoked by one holding title under a deed void because in contravention of one of the provisions of article 34 of the Maryland Declaration of Rights, we see no reason why the same rule is not applicable as to deeds void in view of other provisions of the article. Surely it makes no legal difference whether the deed be void because it fails to state on its face that the land is to be used for a burial ground, or because it attempts to convey for the purposes of a burial ground a little more than two acres of land. In our opinion Bishop Carroll and those holding under him acquired

title to the land in question by an adverse possession of some eighty years.

3. If we are correct in our conclusion that the appellants' title to the land was lost by the vesting of the title in another through adverse possession it is equally true that the Statute of Limitations affects the relation of the parties to the fund in question. The statute in force in this District (Alexander's British Statutes, 446, 447) forbids the entry by any person into any lands or tenements or hereditaments, but within twenty years next after his or their right or title shall have first descended or accrued to him or them, and in default thereof such persons not entering and their heirs are debarred from such entry thereafter to be made. More than twenty years elapsed in this case, and the possession which bars entry was open, continuous, exclusive, and visible.

4. It is urged that error was committed in holding that the stipulation of December 10, 1894, estopped appellants from claiming a one-half interest in the fund by virtue of Peter Cassanave's will. The bill originally filed by Cardinal Gibbons set forth that the defendants, except those named as husbands, were sued as "heirs at law of Ann Cassanave" and "as such heirs at law" were claiming to own some right of reversion therein. The answer filed by the defendants, including these appellants, expressly admits these allegations. The cross-bill thereafter filed by the defendants to the original bill, including these appellants, claims title to the land "as heirs at law and next of kin of Ann Cassanave." No intimation is given of any claim founded on the will of Peter Cassanave. A decree was thereafter entered upon a stipulation signed by all the parties. The settlement was not based on the acknowledgment of any legal right in the defendants to the land in question. It provided, among other things, for the sale of the property, and that of the net proceeds derived from the sale two-fifths were to be paid to Williams and Young, trustees, "for the heirs at law of Ann Cassanave," to be by them distributed pursuant to the terms of their trust to "said heirs at law," as their interest may appear. If the appellants intended to make claim to any part of the fund, save as heirs at law of Ann Cassanave, they should have then asserted it. The fact that they remained silent is very persuasive that in this compromise settlement they waived, and intended to waive, any claim to any part of the fund under the terms of Peter Cassanave's will. Here it may be said that their claim is under the residuary clause of that will. No mention of this land is contained in the will, and in no way, so far as the record shows, did Peter Cassanave ever indicate any desire to gain title to it. The money which is in controversy came to the heirs at law of Ann Cassanave as a compromise. It did not come to the appellants as daughters of the devisee mentioned in Peter Cassanave's will. Had they then insisted that their claim be recognized, the settlement very likely would not have been made. The other heirs at law would doubtless have refused to agree to a settlement that would have cut in two the portions they were to receive. It is also fair to presume that Cardinal Gibbons in agreeing to the settlement

wished to recognize the claim, whether legal or not is immaterial, of the heirs of the original grantee of the land, and did not intend to prefer any of her heirs at law. The appellants were silent when they should have spoken, and not then having spoken, can not now be heard to speak. By the express terms of the stipulation, the fund in question was to go to the heirs at law of Ann Cassanave, and to them as such heirs, and not in any other way. We think an estoppel is shown by the stipulation of settlement, and that is fortified by the then silence of the appellants. No error can be founded in the finding of the auditor, which was duly confirmed by the court, that the appellants are bound by the stipulation of settlement and its recitals.

5. In view of our conclusions as above set forth, and especially of the last, we deem it unnecessary to discuss the fifth assigned error, which raises the question whether Peter Cassanave had any interest in the graveyard that he could devise, and upon which devise appellants can predicate their claim. The land was used as a graveyard when the settlement was made, so it had in no event reverted to the descendants of Ann Cassanave, or those holding in any manner under or through them. If, as we think, adverse possession has been shown, and the statute of limitations had run against Ann Cassanave's heirs, it follows that her son Peter had no interest that he could devise in 1856.

The remaining alleged errors do not require extended comment. The fund was properly marshaled by the auditor for distribution. Even though the auditor should have found that the appellants claim at some time a one-half interest in the fund to be received by the trustees, we think it wholly immaterial in view of the terms of the stipulation of settlement dated December 10, 1894.

Many questions raised in appellants' brief are interesting and are forcibly presented, but beyond those we have considered it is unnecessary to go, and no useful purpose would be subserved by their discussion.

Our conclusion is that the decree of the Supreme Court should be affirmed, with costs, to be paid out of the funds in the hands of the trustees; and it is so ordered. Affirmed.

That a party pleading a judgment as an estoppel must sustain the plea by showing that the particular matter in controversy was actually determined in the former litigation, in accordance with his contention, is declared, in *Draper v. Medlock* (Ga.), 69 L. R. A., 483, where it appears from the record introduced in support of the plea that several issues were involved in such litigation, and the verdict and judgment do not clearly show that this particular issue was then decided.

A State statute of limitations is held, in *Ran-kin v. Barton*, *Advance Sheets U. S.*, 29, not to begin to run against the right to enforce the individual liability of stockholders in a national bank until the amount of such liability has been ascertained and assessed by the Comptroller of the Currency.

Payment by a savings bank of a forged check bearing a signature similar to that of the depositor, to one who presents the depositor's pass-book, there being nothing to arouse the suspicion of the teller, or to put him upon inquiry, as to the genuineness of the check, is held in *Langdale v. Citizens' Bank* (Ga.), 69 L. R. A., 341, not to make the bank liable in a suit by the depositor to recover the money so paid, where a rule of the bank provides that payment to a person presenting a pass-book shall be good and valid, unless the pass-book has been lost and notice in writing given to the bank before such payment is made. With this case is an extensive note on the subject of liability of savings banks for payments to fraudulent claimants.

The right of a steamship company to a limitation of its liability for loss of passengers and baggage through the sinking of its vessel is denied in *Re Pacific Mail Steamship Co.* (C. C. A., 9th C.), 69 L. R. A., 71, where the crew could not understand the language of its officers, and were not drilled in the launching of the boats, because of which the loss occurred, and the statute provides that no steamer carrying passengers shall depart from any port unless she shall have in her service a full complement of licensed officers, and a full crew sufficient at all times to manage the vessel.

Giving a note for interest upon a larger note already barred by the statute of limitations, which does not in any way refer to the earlier note, is held, in *Kleis v. McGrath* (Iowa), 69 L. R. A., 260, not to revive it under a statute providing that causes of action founded on contract are revived by an admission in writing, signed by the party to be charged, that the debt is unpaid, or by a like new promise to pay the same.

A carrier who negligently delays a shipment is held, in *Bibb Broom Corn Co. v. Atchison, T. & S. F. R. Co.* (Minn.), 69 L. R. A., 509, to be liable for the damages, where, because of such delay, the goods are overtaken in transit and damaged by an act of God, even though the act of God could not reasonably have been anticipated.

That a man is deprived of his curtesy interests in land by conveying it to his wife, to her sole, separate, and exclusive use, free and discharged from all his control and liabilities, is held in *Bingham v. Weller* (Tenn.), 69 L. R. A., 370. A note to these cases reviews all the other authorities on effect of conveyance by husband to wife.

The owner of a wagon, seated beside the driver, whom he employs, is held, in *Markowitz v. Metropolitan Street R. Co.* (Mo.), 69 L. R. A., 339, to be chargeable with the driver's negligence in attempting to cross a street-car track in front of an approaching car which is in plain view.

That the statute of frauds is satisfied and specific performance of a contract may be decreed, is held in *Charlton v. Columbia Real Estate Co.* (N. J. Err. & App.), 69 L. R. A., 394, where a signed, but undelivered, lease, taken in connection with a previously signed memorandum in writing or an oral agreement for a lease, shows a complete agreement on the terms of the lease.

Surface waters which, by natural drainage, collect in a natural basin and depression upon the premises of a dominant tenement, and escape therefrom only by percolation or evaporation, forming thereby a lake or pond, permanent in its character, are held, in *Davis v. Fry* (Okla.) 69 L. R. A., 460, to lose the character of surface waters when so collected, so that they may not, by artificial means, other than that incident to the cultivation of the soil, be drained to the damage of a servient tenement without liability for such acts.

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### FINANCIAL.

Annual Report of the Onondaga Gas and Oil Company, January, 1906.

#### REPORT.

#### To the Recorder of Deeds:

In compliance with section 617 of the laws of the District of Columbia, we respectfully submit the accompanying report of the condition, on the first day of January, 1906, of the affairs of the Onondaga Gas and Oil Company, which was incorporated under the laws of the District of Columbia, January 7, 1904.

Capital stock of the company.....	\$100,000 00
Amount of stock sold.....	57,180 00
Amount paid in.....	55,960 00
Amount of existing debts.....	none.

Respectfully submitted.

**SAMUEL S. YODER,**  
President.

**D. H. BOUGHTON,**  
**A. M. LEGG,**  
**S. S. YODER,**  
Trustees.

DISTRICT OF COLUMBIA, ss.:  
The above report is correct.

**A. M. LEGG,** Secretary.

Subscribed and sworn to before me this 5th day of January, 1906.

(Signed)

**CLARA M. HASLUP,**  
Notary Public.

[Seal.]

A subcontractor is held, in *Hunt v. Darling* (R. I.), 69 L. R. A., 497, to be entitled to pursue simultaneously a proceeding to enforce his mechanic's lien against the property and an action against the contractor for the amount due him, in which he attaches funds due the contractor from the property owner.

### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

### Legal Notices.

#### FIRST INSERTION.

**Edward L. Hillyer, Attorney**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Harry U. Walton**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Wednesday, the 28th day of February, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 23d day of January, 1906. **UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA**, by **Edward L. Hillyer**, Attorney. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,746. Administration. [Seal.] 4-3t

**Carlisle & Johnson, Attorneys**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of **Elizabeth McLaughlin**, also known as **Elizabeth A. McLaughlin**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 19th day of February, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 23d day of January, 1906. **GEORGIA ANNE O'NEILL**, by **Carlisle & Johnson**, attorneys. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 10,117. Admn. [Seal.] 4-3t

**Jesse H. Wilson, Solicitor**

In the Supreme Court of the District of Columbia,  
Holding an Equity Court.

**John William Frey et al., Complainants, v. William H. Frey et al., Defendants.** Equity No. 22,056.

**Jesse H. Wilson** and **Levin S. Frey**, trustees, having reported an offer by **George S. Knott**, **Samuel T. Knott**, and **William J. Knott**, to purchase for the sum of thirteen hundred and fifty (1350) dollars, cash, the south half part of lot numbered seven (7) in square numbered one (1) in the city of Washington, District of Columbia, it is this 24th day of January, 1906, ordered that said offer be accepted and that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 26th day of February, 1906, a copy of order to be published in The Washington Law Reporter once a week for three successive weeks before said day. **THOS. H. ANDERSON**, Justice. A true copy. Test: **J. R. Young**, Clerk, by **Wm. F. Lemon**, Asst. Clerk. 4-3t

[Seal]



**Legal Notices.****Edward L. Gies, Attorney****In the Supreme Court of the District of Columbia,  
Holding a Probate Court.****In Re the Estate of Conrad Briel, Deceased.  
Administration, No. 18,890.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by William H. Briel, it is this 23rd day of January, A. D. 1906, ordered that notice be and hereby is given to Engelhard Briel, residing at Marburg, Germany, to appear in said court on Friday, the 2nd day of March, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. 4-3t

[Seal] first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 4-3t

**John S. Alleman, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Harriet Reamer, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of January, 1906. WILLIAM F. REAMER, 907 New York Ave., N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,430. Administration. [Seal.] 4-3t

**Barnard & Johnson, Attorneys****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of Alonzo J. Eaton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of January, 1906. ALONZO B. EATON, 1829 M st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,248. Administration. [Seal.] 4-3t

**Charles W. Darr, Richard A. Curtin, Attorneys****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Mary E. Cook, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of January, 1906. MATTHEW E. COOK, Benning, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,247. Administration. [Seal.] 4-3t

**Frank J. Wissner, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Mary A. Hoover, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of January, 1906. WILLIAM THACKARA POWELL, 1609 31st st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,886. Administration. [Seal.] 4-3t

**Legal Notices****Francois S. Maguire, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Thomas Taylor, Deceased.  
No. 18,391. Administration.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Margaret E. Taylor, it is ordered, this 23d day of January, A. D. 1906, that notice be and hereby is given to Elizabeth Padgett, and to all others concerned, to appear in said court on Monday, the 26th day of February, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 4-3t

[Seal] first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 4-3t

**Irwin B. Linton, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.****Estate of Laura C. Dodge, Deceased.  
No. 18,281. Administration.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by William H. Saunders, it is ordered, this 22d day of January, A. D. 1906, that notice be and hereby is given to the unknown heirs of Laura C. Dodge, deceased, and to all others concerned, to appear in said court on Monday, the 26th day of February, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 4-3t

[Seal] first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 4-3t

**Chas. T. Hendler, Attorney****In the Supreme Court of the District of Columbia,  
Holding a Probate Court.****In Re Estate of Susan Turner, Deceased.  
No. 12,723. Admn. Doc. 83.**

It appearing to the court that the notification as to trial of the issues in this case, relating to the validity of the paper writing dated the 17th day of January, 1901, purporting to be the last will and testament of Susan Turner, deceased, has been returned as to Ella Elroy, Ida German, Sarah Starnell, Annie Gill, Harry Simms, William Simms, Lillie Hall, Sallie Eberhart, Edna Clark (an infant), Mary English, John W. Elliott, Virginia McLane, Lillie Mills, and the unknown heirs at law and next of kin of said Susan Turner, deceased, "not to be found," it is thereupon by the court, this 19th day of January, A. D. 1906, ordered that the issues heretofore framed in this cause be, and they hereby are, set down for trial in this court on the 19th day of February, A. D. 1906, and that the substance of the issues, as shown in the margin of this order, and the date fixed for the trial be published in The Washington Post twice a week for four weeks, and in The Washington Law Reporter once a week for four weeks. WENDELL P. STAFFORD, Associate Justice.

ISSUES.  
1. Was the paper writing propounded as the last will and testament of Susan Turner, deceased, bearing date the 17th day of January, 1901, executed by her in due form of law? 2. Was the said Susan Turner, at the time of executing the said paper writing, of sound mind and disposing mind and capable of executing a valid deed or contract? 3. Was the execution of said instrument by the said Susan Turner procured by the fraud of Harry J. McGowan and Jesse A. McGowan, or either of them, or of any other person or persons? 4. Was the execution of said instrument by said Susan Turner procured by the undue influence of said Harry J. McGowan and Jesse A. McGowan, or either of them, or of any other person or persons? A true copy. Attest: JAMES TANNER, Register of Wills. 4-4t



**Legal Notices.**

**Wm. H. Linkins, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**Estate of Matthew Murphy, Deceased.**  
**No. 13,398. Administration.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Mary H. Murphy, it is ordered, this 25th day of January, A. D. 1906, that notice be and hereby is given to the unknown heirs and next of kin of said Matthew Murphy, deceased, and to all others concerned, to appear in said court on Wednesday, the 7th day of March, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before [Seal] said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 4-3t

**Blair and Thom, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**In the Matter of the Estate of Augustine Heard,**  
**Deceased.**  
**Probate No. 13,394.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for the probate of the last will and testament of said deceased as a will of real and personal property, and for letters testamentary upon said estate, by Augustine A. Heard, one of the executors named in said will, the other executor named in said will having declined to act and refused said appointment, it is this 24th day of January, 1906, ordered that notice be, and the same is hereby, given to H. Maxima von Brandt and John Heard, Junior, and all others concerned, to appear in said court on the 26th day of February, 1906, at 10 o'clock A. M., to show cause why said application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each week for three consecutive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. By the Court: WENDELL P. STAFFORD, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills, Clerk of the Probate Court. 4-3t

**Walter C. Clephane, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the State of New York and the District of Columbia respectively, have obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Swan M. Burnett, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers on or before the 25th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 25th day of January, 1906. MARGARET BRADY BURNETT, 916 Farragut Square, Wash., D. C. VIVIAN BURNETT, 225 West End ave., New York City. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,457. Administration. [Seal.] 4-3t

**Irving Williamson, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Juno Stewart, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 18th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 18th day of January, 1906. SAMUEL W. CURRIDEN, Office of Center Market; IRVING WILLIAMSON, Columbian Bldg.; LLOYD H. CHANDLER, 2144 Cal. ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,321. Administration. [Seal.] 4-3t

**Legal Notices.**

**Wm. M. Lewin, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Rebecca Lycett, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of January, 1906. ETHAN ALLEN LYCETT, 311 N. Charles st., Balto., Md. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,361. Admn. [Seal.] 4-3t

**John J. Brosnan, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Louisa Muse, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of January, 1906. JAMES H. MUSE, 414 1st N.W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,401. Administration. [Seal.] 4-3t

**John J. Brosnan, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Thomas P. Kelley, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of January, 1906. JOHN J. BROSNAN, 482 La. ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,128. Administration. [Seal.] 4-3t

**Barnard & Johnson, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**  
**Estate of John B. Simmons, Deceased.**  
**No. 13,345. Administration.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Clara B. Simmons, it is ordered, this 25th day of January, A. D. 1906, that notice be and hereby is given to Mary Eliza McLeod, and to all others concerned, to appear in said court on Monday, the 26th day of February, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in the Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 4-3t

**SECOND INSERTION.**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of William C. Lewis, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of January, 1906. ANNA L. LEWIS, The Mendota. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,375. Administration. [Seal.] 8-3t

**Legal Notices.**

**Reginald S. Huidekoper, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**Mary E. McElhannon, Complainant, v. J. Walter Mc-**  
**Elhannon and Catherine Burgess, Defendants. In**  
**Equity. No. 25,762.**  
 The object of this suit is to obtain a divorce from the bonds of marriage. On motion of the complainant, it is, this 9th day of January, A. D. 1906, ordered that the defendants, J. Walter McElhannon and Catherine Burgess, cause their appearance to be entered herein on or before the fortheth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order is to be published in The Washington Law Reporter and The Washington Times once a week for three successive weeks.  
 [Seal.] By the court: THOS. H. ANDERSON, Justice.  
 A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 3-3t

**S. V. Hayden, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**  
**Estate of John Shafer, Deceased.**  
**No. 13,365. Administration.**  
 Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Mary Irene Shafer, it is ordered, this 16th day of January, A. D. 1906, that notice be and hereby is given to Irene Baker, infant, and to all others concerned, to appear in said court on Monday, the 19th day of February, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in the Washington Law Reporter once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.  
 [Seal.] WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 3-3t

**Walter C. Clephane, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**  
**Estate of Wm. B. Brown, Deceased.**  
**No. 11,108. Administration.**  
 Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration de bonis non on the estate of Wm. B. Brown, by Weston Brown Flint, it is ordered, this 16th day of January, A. D. 1906, that notice be and hereby is given to Nannie C. Sabine, and to all others concerned, to appear in said court on Monday, the 19th day of February, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.  
 [Seal.] WENDELL P. STAFFORD, Justice. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 3-3t

**Richard A. Curtin, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Frances L. Kilroy, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 21st day of November, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of January, 1906. JAMES J. KILROY, 16 Eye st., N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,289. Administration. [Seal.] 3-3t

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**Legal Notices.**

**George E. Fleming, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of George H. Weeks, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of January, 1906. CROSSBY P. MILLER, Room 221, War Department. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,394. Administration. [Seal.] 3-3t

**Pennebaker & Jones, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Henry Kuhn Hoff, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of January, 1906. ARTHUR FAIRBRIDGE HOFF, care of Pennebaker & Jones, 1331 F st., N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,390. Administration. [Seal.] 3-3t

**Stanton C. Peelle, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**This is to Give Notice** That the subscriber, of the State of Pennsylvania, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Herman Haupt, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of January, 1906. LEWIS M. HAUPT, 107 N. 35th st., Phila., Pa. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,409. Administration. [Seal.] 3-3t

**Walter H. Marlow, Jr., Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Regina Roth Spicer, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of January, 1906. WALTER H. MARLOW, JR., 438 9th st., N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,408. Administration. [Seal.] 3-3t

[Filed January 12, 1906. J. R. Young, Clerk.]  
**Geo. Francis Williams, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Ernestine Frank, an Infant, by Her Guardian, v.**  
**Lawrence Frank et al. No. 25,856. In Equity.**  
**George Francis Williams, trustee, in the above entitled**  
**cause, having reported sale of lot 16 in Carpenter's**  
**subdivision of lots in square 818 unto Frances E. Jost for**  
**\$3,950.00, it is this 12th day of January, 1906, ordered that**  
**said sale be confirmed unless cause to the contrary be**  
**shown on or before the twelfth day of February next;**  
**provided this order be published once a week for three**  
**successive weeks before that day in The**  
**Washington Law Reporter. By the Court:**  
 [Seal] THOS. H. ANDERSON, Justice. A true copy.  
 Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 3-3t

Justice blanks of every description for sale at this office.

**Legal Notices.****Lemuel Fugitt, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Wate McCarten**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of January, 1906. **LEMUEL FUGITT**, 472 La. Ave. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,388. Admn. [Seal.] 3-3t

**Edwin A. McIntire, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Martha McIntire, Deceased.  
No. 13,387. Administration.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by **Edwin A. McIntire**, the executor nominated in said will, it is ordered, this 16th day of January, A. D. 1906, that notice be and hereby is given to **William E. McIntire** and **Henry Norman McIntire**, whose exact residence is not known; but they are believed to be on the Pacific coast of the United States. They have not been heard from for two years. The last known address of **William E. McIntire** was, printer, Colfax, State of Washington, and of **Henry N. McIntire** was, poultry dealer, San Diego, California, and to all others concerned, to appear in said court on Monday, the 19th day of February, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in *The Washington Law Reporter* and *The Washington Times* once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] **WENDELL P. STAFFORD**, Justice. Attest: **Wm. C. Taylor**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 3-3t

**THIRD INSERTION.****Geo. H. White, Solicitor****In the Supreme Court of the District of Columbia.  
Isabella McLane v. Cary P. McLane, Cornelia Lindsey.  
No. 25,871. Equity Docket, No. —**

The object of this suit is to obtain a divorce from the bonds of matrimony now existing between the plaintiff and the defendant, **Cary P. McLane**, upon statutory grounds, provided a copy of this order be published once a week for three consecutive weeks in *The Washington Law Reporter* and *The Washington Record*. On motion of the complainant, it is, this 9th day of January, Anno Domini 1906, ordered that the defendants cause their appearance to be entered herein on or before the 40th day, exclusive of Sundays and legal holidays, occurring after the first day of publication of this order; otherwise this cause will be proceeded with as in case of

[Seal] default. By the court. **THOS. H. ANDERSON**, Justice. True copy. Test: **John R. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. 2-3t

**Millan & Smith, Attorneys****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Eleanor N. T. Meeds**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of December, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of January, 1906. **BENJAMIN N. MEEDS**, 1010 Pa. ave. S. E. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,357. Adm. [Seal.] 2-3t

Justice blanks of every description for sale at this office.

**Legal Notices.****Walter A. Johnston, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **James F. Pearce**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of January, 1906. **REBECCA DELANEY HOOE**, 1020 6th st. S. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,283. Administration. [Seal.] 2-3t

**Chas. W. Boyle, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Michael F. Griffin**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of January, 1906. **MARGARET E. GRIFFIN**, 305 C st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,353. Admn. [Seal.] 2-3t

**Henry S. Matthews, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Victoria E. Leetch**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 5th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 5th day of January, 1906. **WILLIAM A. LEETCH**, 1897 31st st. N. W.; **FRANK P. LEETCH**, 1696 31st st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,377. Administration. [Seal.] 2-3t

**Blair & Thom, Solicitors****In the Supreme Court of the District of Columbia,  
Holding an Equity Court.  
George B. Read, Complainant, v. Gertrude R. Randolph et al., Defendants.****Equity No. 25,910.**

The object of this suit is to appoint a trustee in the place of **William Thompson Harris**, now deceased, to carry out the trusts contained in the last will and testament of **Mary E. Read**, to sell the real estate belonging to the said **Mary E. Read**, and to distribute the proceeds of the same as directed by her said will. Upon motion of the complainant, it is, this 10th day of January, 1906, ordered that the defendants, **Mary A. Bat s. Anna T. Harris**, **Emily T. Harris**, **Catherine H. Dodge**, **Rita Howard**, and **Elizabeth Howard**, and each of them, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order to be published once a week for three consecutive weeks in *The Washington Law Reporter* and *The Washington Post*. By [Seal] the court. **THOS. H. ANDERSON**, Justice. A true copy. Attest: **John R. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. 2-3t

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. *The Law Reporter Company*, 518 Fifth Street, N. W.

## Legal Notices.

Ivan Heldeman, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Mary Shelton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of January, A. D. 1907; otherwise they may be by law excluded from all benefit of said estate. Given under my hand this 5th day of January, 1906. GEORGE BURGESS, Stewart Bldg., 6 & D sts. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court No. 12,546. Administration. [Seal.] 2-3t

Filed January 9, 1906, J. R. Young, Clerk.  
W. H. Linkins, Solicitor  
In the Supreme Court of the District of Columbia,  
Holding an Equity Court.  
Patrick O'Toole v. George Thompson et als.  
In Equity, No. 25,908.

The object of this suit is to perfect complainant's title to original lot 18, square eighty-eight (88), in the city of Washington, District of Columbia. On motion of the complainant, by his solicitor, William H. Linkins, it is, this 9th day of January, A. D. 1906, ordered that the defendants, George Thompson, Samuel Smoot, William Thompson, trustee, James Wilson, and Thomas Wilson, and the unknown heirs, devisees, grantees, and alienees, both immediate and mediate, and the unknown heirs of such devisees, grantees, or alienees, or persons claiming under, by, or through any parties who might be so described, of all said above-named parties, and also of Andrew Sullivan, deceased, and the grantees or alienees of Ann Clephane, deceased, either immediate or mediate, or the heirs of such grantees or alienees, or any parties who claim under, by, or through any parties who might be so described, cause their appearance to be entered herein on or before the first rule day occurring three months after the first publication of this order; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published in Washington Law Reporter and The Washington Times for three successive months prior to said return day and, in the following manner, once a week for three successive weeks during the first month and twice a month during each of the two succeeding months.

[Seal] By the court. THOS. H. ANDERSON, Justice.  
A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk.

Jan. 12, 19, 26; feb. 9, 16; mar. 9, 16

Jas. H. Taylor, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Margaret A. Wetzel, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of January, to the subscriber, otherwise they may be by law excluded from all benefit of said estate. Given under my hand this 10th day of January, 1906. JAMES H. TAYLOR, 1419 G st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,978. Administration. [Seal.] 2-3t

Filed January 9, 1906, J. R. Young, Clerk.  
Raum & Richardson, Solicitors  
In the Supreme Court of the District of Columbia.  
Octavia Robey et al. v. Octavia V. Robey et al.  
In Equity, No. 25,571.

John Raum and Albert L. Richardson, trustees, having reported an offer by Curry E. Thrift to purchase for \$700.00 cash the property described in this proceeding, to wit: Lot 274 in Untontown, in the County of Washington, in the District of Columbia, it is, this 9th day of January, 1906, ordered that said offer be, and hereby is, accepted, and the said sale be, and hereby is, ratified and confirmed, unless cause to the contrary be shown on or before the 15th day of February, 1906. Provided that a copy of this order be published in the Washington Law Reporter and Washington Times once a week for three successive weeks, the first publication to occur at least 30 days before the said 15th day of February,

[Seal.] 1906. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 2-3t

## Legal Notices.

H. T. Winfield, Attorney  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.  
Estate of Daniel R. A. Lyons, Deceased.  
Administration, No. 13,333. New Series.

## ORDER OF PUBLICATION.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by Thomas M. Robinson, it is ordered this 4th day of January, A. D. 1906, that notice be and hereby is given to George Lyons, a non-resident of the District of Columbia, and to all others concerned, to appear in said court on Monday, the 12th day of February, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return date herein mentioned, the first publication to be not less than thirty days before [Seal] said return date. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. 2-3t

M. F. Mangan, Solicitor  
In the Supreme Court of the District of Columbia.  
Standard Sewing Machine Company, a Corporation,  
Complainant, v. Samuel S. Adams, Assignee, Ernest Burgdorf, Bella A. Hollister, Annie W. Hollister, William J. Johnston, George T. Keen, and John J. Hollister, Defendants. Equity No. 12,978.

Chaplin Brown, receiver appointed in this cause, having reported that he has received an offer from John P. Earnest of twenty-five (\$25) dollars for the one-third undivided interest of John J. Hollister in lots 131, 132, 133, and 134, in Chas. E. Barnes' subdivision of lots 90 to 98 and 99 to 101 in Thos. E. Waggaman's subdivision of part of "Long Meadows," recorded in county book No. 6, page 27, in the office of the surveyor of the District of Columbia, it is, by the Court, this 8th day of January, A. D. 1906, ordered, that the said offer to purchase said undivided interest in said property be accepted and the sale of said undivided interest in said property be ratified and confirmed to said Earnest, and that the said receiver be authorized and empowered to convey the said undivided interest in the above described property, by deed, to the said purchaser, unless cause to the contrary be shown on or before the 9th day of February, A. D. 1906. Provided that a copy of this order be published in The Washington Law Reporter once a week for each of three successive weeks before said last-named day. THOS. H. ANDERSON, Justice.

A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 2-3t

## FOURTH INSERTION.

[Filed December 11, 1905. J. R. Young, Clerk.]  
Brandenburg & Brandenburg, Solicitors  
In the Supreme Court of the District of Columbia,  
Holding an Equity Court.

Ele W. Tuller v. Unknown Heirs and Devisees of Isaac N. Hansbrough, Deceased. No. 25,780, Equity.  
The object of this suit is to construe the conveyance to Ele W. Tuller and Isaac N. Hansbrough, as vesting in the complainant the fee simple title, by survivorship, and of the sale of the real estate situated in the District of Columbia, and in square 118 and bounded and described as follows: being lots 15 and 16 in said square, bounded on the north by Road street, on the south by Stoddard street, on the east by Green street, and on the west by Washington street, said two lots fronting on Washington street, opposite Cook's Park. The defendants to this suit are the unknown heirs and devisees of Isaac N. Hansbrough, deceased. On motion of the complainant, by Brandenburg & Brandenburg, his solicitors, it is this 11th day of December, 1905, ordered that the defendants cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. This order shall be published twice a month during said three months in The Washington Law Reporter and in The Washington Post. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. Dec. 22-29, Jan. 19-26, Feb. 16-23

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### Brief-Making and the Use of Law Books.

A volume with the above title, issued from the press of the West Publishing Co., may justly be characterized as one of the most valuable of recent legal publications. The work is by William M. Lile, Henry S. Redfield, Eugene Wambaugh, Alfred F. Mason, and James E. Wheeler, all prominent as legal educators and authors, and is edited by Nathan Abbott, jr., dean of the Leland Stanford University School of Law. Its primary purpose is to afford to students of law systematic instruction in brief-making, the investigation of authorities, the classification of the law, and legal bibliography. The thorough study of its contents by a student can not but prove of incalculable benefit to him when he enters upon the active duties of his profession. The law schools of the country have been quick to appreciate its value, and it is stated that more than sixty of them have decided to use it in their classes. The art of brief-making—the knowledge not only of the law but how to use it, the ability quickly and discriminately to analyze a decision—these are essential elements in a professional equipment; and lawyers in general, as well as students of the law, will find the suggestions made and information contained in this book most helpful. It is deserving a place in every lawyer's library.

### Actions on Bonds Given by Contractors with United States.

The recent decision of the Supreme Court of the United States in the case of *United States* to the use of *Hill v. American Surety Company*, reported in our issue of January 19, 1906, and which construed the act of Congress of August 13, 1894, "for the protection of persons furnishing materials and labor for the construction of public works," has been read with much interest. Reference is made in that decision to the act of Congress of February 24, 1905, amending in important particulars that of August 13, 1894. The act, as amended, is as follows:

"That hereafter any person or persons entering into a formal contract with the United States for the construction of any public building, or the prosecution and completion of any public work, or for repairs upon any public building or public work, shall be required, before commencing such work, to execute the usual penal bond, with good and sufficient sureties, with the additional obligation that such contractor or contractors shall promptly make payments to all persons supplying him or them with labor and materials in the prosecution of the work provided for in such contract; and any person, company, or corporation who has furnished labor or materials used in the construction or repair of any public building or public work, and payment for which has not been made, shall have the right to intervene and be made a party to any action instituted by the United States on the bond of the contractor, and to have their rights and claims adjudicated in such action and judgment rendered thereon, subject, however, to the priority of the claim and judgment of the United States. If the full amount of the liability of the surety on said bond is insufficient to pay the full amount of said claims and demands, then, after paying the full amount due the United States, the remainder shall be distributed pro rata among said interveners. If no suit should be brought by the United States within six months from the completion and final settlement of said contract, then the person or persons supplying the contractor with labor and materials shall, upon application therefor, and furnishing affidavit to the department under the direction of which said work has been prosecuted that labor or materials for the prosecution of such work has been supplied by him or them, and payment for which has not been made, be furnished with a certified copy of said contract and bond, upon which he or they shall have a right of action, and shall be, and are hereby, authorized to bring suit in the name of the United States in the circuit court of the United States in the district in which said contract was to be performed and executed, irrespective of the amount in controversy in such suit, and not elsewhere, for his or their use and benefit, against said contractor and his sureties, and to prosecute the same to final judgment and execution: Provided, That where suit is instituted by any of such creditors on the bond of the contractor it shall not be commenced until after the

complete performance of said contract and final settlement thereof, and shall be commenced within one year after the performance and final settlement of said contract, and not later: And provided further, That wheresuit is so instituted by a creditor or by creditors, only one action shall be brought, and any creditor may file his claim in such action and be made party thereto within one year from the completion of the work under said contract, and not later. If the recovery on the bond should be inadequate to pay the amounts found due to all of said creditors, judgment shall be given to each creditor pro rata of the amount of the recovery. The surety on said bond may pay into court, for distribution among said claimants and creditors, the full amount of the sureties' liability, to wit, the penalty named in the bond, less any amount which said surety may have had to pay to the United States by reason of the execution of said bond, and upon so doing the surety will be relieved from further liability. Provided, further, that in all suits instituted under the provisions of this act such personal notice of the pendency of such suits, informing them of their right to intervene as the court may order, shall be given to all known creditors, and in addition thereto notice of publication in some newspaper of general circulation, published in the State or town where the contract is being performed, for at least three successive weeks, the last publication to be at least three months before the time limited therefor."

A trespass committed upon a guest in a hotel by a servant of the proprietor, whether actively engaged in the discharge of his duties at the time or not, is held, in *Clancy v. Barker*, (Nebr.), 69 L. R. A., 642, to be a breach of the implied undertaking that the guest shall be treated with due consideration for his comfort and safety, for which the proprietor is liable in damages. A note to this case reviews the other authorities on liability of innkeeper for injury to guest by servant.

That an innkeeper is not liable for an injury inflicted upon a guest in his hotel by a servant who was not at the time of the injury acting within the apparent or actual scope of his employment is declared in *Clancy v. Barker* (C. O. App. 8th C.), 69 L. R. A., 653.

Permission to use a stairway erected on the outside of a building for ingress and egress to and from the second story of another building, in consideration that the owners of the latter building will permit the owner of the other one to erect a porch on a 5-foot strip of a vacant lot adjoining the back end of his building, is held, in *Howes v. Barmon* (Idaho), 69 L. R. A., 568, not to amount to the grant of an easement, but to constitute a license only, revocable by the licensor.

That a deed absolute on its face can not be delivered to the grantee therein named to be held by him in escrow; and that such a delivery will operate as absolute and freed from all parol conditions, vesting the title at once, is held in *Whitney v. Dewey* (Idaho), 69 L. R. A., 572.

## Supreme Court of the District of Columbia.

### UNITED STATES

V.

GEORGE W. BEAVERS ET AL.

CRIMINAL LAW; BRIBERY; CHECKS; INDICTMENT; CERTAINTY OF DESCRIPTION; CONSPIRACY TO COMMIT OFFENSE OF OFFICIAL MISCONDUCT; CONSPIRACY TO DEFRAUD.

1. A check is an obligation within the meaning of section 5501 R. S., providing that "every official of the United States . . . who asks, accepts, or receives any money, or any contract, promise, undertaking, obligation . . . with intent to have his decision or action . . . influenced thereby, shall be punished," etc.
2. Except in the cases of forgery and libel, it is not necessary that a written instrument shall be set out in *hæc verba* in an indictment, but the instrument may be described by a general designation.
3. A demurrer to an indictment charging the defendant, an official of the Government, with a violation of section 5501 R. S., in accepting a bribe, the grounds of demurrer assigned being that a check is not an obligation within the meaning of that section, and if so, that the check was not sufficiently described, overruled.
4. It is unnecessary that an indictment under said section 5501 R. S. shall allege that the obligation alleged to have been received by the defendant was of value; the fact that a check so received may be void because of the corrupt agreement under which it was given not being available as a defense.
5. An indictment against A and B for conspiracy to commit the offense of misconduct in office, which, after alleging the official position of A, alleges an agreement between them that upon each purchase for the United States from the company represented by B through the procurement and influence of A, the latter should receive a certain commission for his private use and benefit, need not specifically aver that such agreement was with criminal intent, such intent being *prima facie* inferred from the agreement.
6. Nor, in such case, is it necessary to aver that the agreement was unlawful, wilful, or corrupt, no statute making such qualities essential to a description of the offense, and there being no other possible conclusion from the facts charged than that the agreement was unlawful, wilful, and corrupt.
7. The legal meaning of the word agree or agreement is a meeting of the minds of at least two parties, and where an indictment for conspiracy charges that A agreed with B, it conclusively avers that B agreed with A.
8. An indictment alleging that by reason of the corrupt agreement referred to, the United States was defrauded of the sums paid as commissions, and that but for such corrupt and unlawful agreement such purchases could have been made by A for the United States at prices less than those paid by at least the amount of such commissions, held sufficiently to allege a conspiracy to defraud the United States, under section 5440 R. S.

Criminal, Nos. 23,926, 23,928, 23,940, 23,950, 23,961. Decided January 26, 1906.

HEARING on demurrers to indictments for violation of sections 5501 and 5440, R. S. Overruled.

Mr. Arthur A. Birney for the defendant Beavers.

Mr. D. W. Baker and Mr. Stuart McNamara for the United States.

Mr. Justice GOULD delivered the opinion of the Court:

The questions to be determined in these cases are raised by demurrers filed by the defendant Beavers to certain of the indictments and by pleas in abatement filed by the defendants, Green and Doremus, to indictments in which they are defendants. The indictments to which demurrers are interposed are as follows: No. 23,926, against Beavers alone, charging him with

a violation of section 5501 of the Revised Statutes of the United States, prohibiting every person acting for or on behalf of the United States in any official capacity from accepting money or other things specified in the section with intent to have his decision as such officer influenced thereby; No. 23,928, against Beavers and Green, charging them with a conspiracy to commit an offense against the United States in violation of section 5440 of the Revised Statutes of the United States; No. 23,940, against Beavers and Green, charging them with conspiracy to defraud the United States in violation of said section 5440; No. 23,959, against Beavers alone, for violation of said section 5501, and 23,961, against Beavers, Green, and Doremus, for conspiracy to defraud the United States in violation of said section 5440.

These demurrers will be considered in their numerical order.

Considering, first, indictment No. 23,928, which charges Beavers with a violation of section 5501 in accepting a bribe, the indictment charges that on July 1, 1901, until March 24, 1903, Beavers was an officer of the United States, and a person acting for and on behalf of the United States in an official capacity under and by virtue of the authority of a department of the Government thereof; that is to say, general superintendent of salaries and allowances in the office of the First Assistant Postmaster-General in the Post-office Department, and was performing the duties of such office, by reason of which he was charged with the consideration of allowances for miscellaneous and incidental items of supplies, including furniture for use at first and second-class post-offices, and also with procuring, in accordance with the methods provided by law, from persons and corporations such supplies and furniture, by open purchase or contract, at the prices and in the manner in which such supplies and furniture are usually bought and sold between individuals, of which regulations Beavers had notice; that it was his duty carefully to guard the interests of the Government and to preserve those interests in making allowances for and procuring such supplies and furniture, and to secure terms as favorable to the United States as possible when making contracts with persons proposing to furnish such supplies, and to obtain such supplies as cheaply as possible, and to advise his superior officers concerning all matters requiring their notice and pertaining to the discharge of his duties, and to inform them truly concerning all purchases considered by him in the discharge of his duties.

The indictment further sets out that George E. Green, during the period aforesaid, was president and agent of the International Time Recording Company, a corporation engaged in the business of selling so-called time-recording devices for use in post-offices, for recording the time of arrival and departure of employees, and undertook to furnish, and did furnish, large numbers of such devices to the said Post-office Department for the use of first and second-class post-offices; and that Green knew Beavers to be such officer and acting in the official capacity as aforesaid.

So much by way of inducement. The stating or charging part of the indictment avers that

on December 11, 1901, Beavers and Green entered into an unlawful and corrupt agreement whereby the said Green promised on behalf of said corporation to pay Beavers, for his own personal use and benefit, from time to time, as the said corporation itself received pay therefor, and while he (Beavers) continued to act in such official capacity, 10 per centum of all sums paid out of the moneys appropriated to the said corporation for purchasing time-recording devices for the said Post-office Department; and that Beavers, in pursuance of said agreement and while acting as such officer, "did accept and receive from the said George E. Green, president and agent of the said corporation, a certain obligation for the payment of money, to wit, the personal check of him the said George E. Green, drawn upon the Knickerbocker Trust Company, of New York City, New York, in favor of the said George W. Beavers, for the sum of \$325, with intent on the part of him, the said Beavers to have his decision and action on a matter then pending and thereafter to be brought before him in his said official capacity . . . influenced thereby to the detriment of the said United States, that is to say, to have his decision and action in the matter of then and thereafter making allowances for and procuring for the said Post-office Department, in the manner aforesaid, from the said corporation, time-recording devices of the kind aforesaid, otherwise than in the manner in which such articles are usually bought and sold between individuals, and not as cheaply as possible . . . and with intent to have his, the said George W. Beavers', action in the matter of faithfully and truthfully advising his said superior officers, or the persons acting as such, of and concerning all the matters requiring their supervision and notice and pertaining to the discharge of his duties, influenced thereby adversely to his true duty and to the interests of the said United States, and in such manner as to cause him to connive at and allow the fraud on the said United States involved in the said unlawful and corrupt agreement; against the peace and dignity," etc.

The second count, adopting the inducement and intents of the first, charges the acceptance from Green, on January 30, 1902, of "a certain other obligation, to wit, another personal check of him, the said George E. Green, drawn upon the Seventh National Bank of New York City, New York, for the sum of \$331.18 in money, payable to him," the said Beavers.

The third count charges the acceptance on April 26, 1902, from the said Green of "a certain other obligation, to wit, the personal check of him, the said George E. Green, drawn upon the Seventh National Bank of New York City, New York, for the sum of \$418.36 in money, payable to him, the said" Beavers.

The fourth count charges the acceptance on October 8, 1902, from said Green of "a certain other obligation, to wit, another personal check of him, the said George E. Green, drawn upon the Seventh National Bank of New York City, New York, for the sum of \$842.88 in money," payable to said Beavers.

The objections urged to this indictment are as follows:

1. That it does not charge any offense, be-



cause a check is not an obligation within the meaning of section 5501.

2. That even if it were such an obligation, it is not set out with sufficient certainty.

3. That even if an obligation, it was a void one, of no value, and hence could not perform the functions of a bribe.

It may be stated that these are the propositions upon the strength of which the United States District Court for the Northern District of New York held void indictment No. 23,927, against George E. Green, charging him, under section 5451 of the Revised Statutes of the United States, with bribing Beavers. *United States v. Green*, 136 Fed., 618. It may be conceded that, if the conclusions reached by that court respecting indictment No. 23,927 correctly interpret the law, then the demurrer interposed in the present case should be sustained and the defendant discharged.

The section of the Revised Statutes under which the indictment under consideration is framed reads as follows:

"Sec. 5501. Every officer of the United States, and every person acting for or on behalf of the United States, in any official capacity under or by virtue of the authority of any department or office of the Government thereof; and every officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or of both Houses thereof, who asks, accepts, or receives any money, or any contract, promise, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, with intent to have his decision or action on any question, matter, cause, or proceeding which may, at any time, be pending, or which may be by law brought before him in his official capacity, or in his place of trust or profit, influenced thereby, shall be punished as prescribed in the preceding section."

1st. Is a check an "obligation" within the intendment of this section?

The language of the first count is that Beavers accepted "a certain obligation for the payment of money, to wit, the personal check of" Green. At the outset it may be observed that the word "obligation," amplified as it is by a description of the check, might properly be rejected as surplusage. The section enumerates "any contract, promise, undertaking, obligation, gratuity, or security for the payment of money," and if the check described comes within any one of these classes, it would be unnecessary to allege within which specific class it falls, and an incorrect classification would be properly disregarded as surplusage. Thus, if money or bank bills, in an indictment for larceny, be erroneously described as "of the goods and chattels" of the owner, these words may be rejected as surplusage, and the indictment will be sufficient. *Regina v. Radley*, 1 Denison O. C., 450; *Eastman v. Com.*, 4 Gray, 416; *Com. v. Bennett*, 118 Mass., 452.

So, in an indictment which charged that the defendant by false pretenses obtained from A "a check for the sum of 8£ 14s. 6d. of the moneys of B," this was held a sufficient allegation that the check was the property of B, the words "of the moneys" being rejected as surplusage. *Regina v. Godfrey, Dearsly & Bell* O. C., 426.

But I am of the opinion that the word "obligation," as used in this statute, should be construed to include a check.

It may be conceded that originally the word "obligation," as a legal term, meant a sealed instrument, but an examination of the modern decisions and a reference to the text-books disclose two facts; first, that there has been a complete departure from the original meaning; and, second, that in the modern cases, its meaning depends largely upon the context. Thus, in the case of *Munzinger v. United Press et al.*, 65 N. Y. Sup., 194, the court uses this language: "The word obligation originally meant a bond containing a penalty, with a condition for the payment of money, or to do or suffer some thing or act (Co. Lit., 172 a). The meaning of the word, however, has gradually been enlarged by the courts, and it has ceased to be restricted to a bond or writing obligatory, and has been extended to mean a paper by which some fixed duty is assumed to be performed at a certain time, or an instrument in writing, whereby one party contracts with another for the payment of money at a fixed date, or for the delivery of specific articles. But, however, various have been the definitions given to the word, the one essential element has always been that it must be a written paper, the duty assumed by which must be a fixed duty."

So, in the case of *Morrison v. Lovejoy*, 6 Minn., 319, at page 353, it is held that the term "obligation," as used in a statute allowing a counterclaim in an action arising on obligation, means contract, and comprehends all causes of action arising ex contractu, as distinguished from causes of action arising ex delicto.

Upon this proposition the criminal case of *State v. Campbell*, 103 N. C., 344, is very apposite. There the defendant was indicted for larceny of a "due-bill" under a statute which made it larceny to feloniously steal, take, and carry away "any order, bill of exchange, promissory note, or other obligation, either for the payment of money or for the delivery of specific articles." It was contended that a "due-bill" was not within the terms or meaning of the statute. The court said:

"A 'due-bill' is really a simple acknowledgment by the maker thereof of a debt due to the person named in it, without any promise therein to pay the same, and such an acknowledgment is not a promissory note, nor negotiable by indorsement. . . . The 'due bill' charged to have been stolen is not specified with as much precision and fullness as it should have been. We must take it to be simply a 'due bill' and, therefore, it does not come within the meaning of the words 'any order, bill of exchange, bond, promissory note'; but we think it is embraced by the words, 'or other obligation.' The word obligation, in its most technical meaning, implies, ex vi termini, a sealed instrument; but it certainly has, also, a very broad and comprehensive legal significance, and embraces all instruments in writing, however, informal, whereby one party contracts with another 'for the payment of money, or the delivery of specified articles' whether the same be under seal or not. The words, 'or other obligation' are used in a remedial and comprehensive sense, as appears from the purpose of the statute, and the



enumeration of the several classes of obligations made the subject of larceny by it—they imply like or similar obligations—some under seal, and others not. A "due bill" is evidence of an obligation to pay money; the maker, by it, acknowledges the indebtedness, and the law implies and raises the obligation to pay it."

Dr. Wharton, in his *Criminal Pleading and Practice*, 8th edition, section 198, says of the word obligation: "Under statutes based, as those of Louisiana, on the Roman law, an obligation is a unilateral engagement by which one party engages himself to do a particular thing. The English common law authorities sometimes speak as if the term is limited to bonds with penalties. *But when the term is used in a statute as nomen generalissimum, it must be construed in its most liberal sense.*"

In none of the more modern and analytical treatises on the law of contracts is the word obligation given its archaic meaning of a sealed instrument. It is rather defined as a right in personam, a right against a person reducible to a money value. Anson *Cont.* (4th ed.), 7; Pollock *Cont.*, 4; Hammon *Cont.*, p. 17. Moreover, by the application of one of the most satisfactory of the rules of construction of statutes, viz: that the whole of the act must be considered to ascertain the meaning of doubtful terms, it is evident that the word "obligation" was not intended to include sealed instruments only; for the word "contract," which precedes it in the section in question, must be held to include sealed instruments, and this would render the term "obligation" useless and meaningless, if confined to that construction.

The word "check" had a statutory definition in this district at the time of the alleged commission of the offenses described in this indictment. This is now embodied in section 1489 of the Code, as follows:

"A check is a bill of exchange drawn on a bank, payable on demand. Except as herein otherwise provided, the provisions hereof applicable to a bill of exchange payable on demand apply to a check."

To my mind, it is an "obligation" in a two-fold sense. It is certainly the written evidence that the maker is under a pecuniary obligation to the payee. As said by Mr. Justice Field, in the case of *Bull v. Bank of Kasson*, 123 U. S., 105:

"A check implies a contract on the part of the drawer that he has funds in the hands of the drawee for its payment on presentation."

In the hands of a bona fide holder for value the "obligation" of the maker to the holder is practically the same as his obligation on any other negotiable paper. 2 Daniel's *Neg. Inst.* (4th ed.), sects. 1651-2; *Bull v. Bank*, supra.

Even if it be not considered as the legal obligation of the maker to the payee or holder, yet every check is certainly the expression of an obligation on the part of the bank upon which it is drawn to the drawer to honor the same when duly presented, sufficient funds for its payment having been provided. As said by Mr. Justice Mathews, in *Central National Bank v. Conn. Mut. Life Ins. Co.*, 104 U. S., 693:

"The contract between the bank and the depositor is, that the former will pay according to the checks of the latter; and it is settled law

that upon failure of the bank to honor the checks of the depositor, the latter may sue and recover damages for this breach of the implied contract."

I am, therefore, constrained to hold that, whether viewed as an obligation of the bank upon which it is drawn by virtue of the implied contract between it and the depositor, or as the written evidence of an obligation of the maker to the payee or holder, it comes fairly within the *nomen generalissimum* in this section.

It may be observed that the question as to whether a draft is an obligation within the meaning of this statute, was before the Supreme Court of the United States in the recent case of *Beavers v. Haubert*, 198 U. S., 87, which involved indictment No. 23,959 of this series. It is possible that this point was not pressed upon that court in that case, but speaking of the indictment it used this language:

"There is no question made of the sufficiency of the indictment. It certainly charges a crime. It charges that Beavers was superintendent of the division of salaries and allowances in the office of the First Assistant P. G., and that he entered into a corrupt agreement with W. Scott Towers, an agent of the Elliot and Hatch Book Typewriter Co., whereby Towers promised to pay to Beavers the sum of \$25, out of each \$200 paid to said company for book typewriters, and that Beavers received from Towers, in pursuance of the agreement, a draft for the sum of \$350. The agreement was made and the draft given for the purpose of influencing Beavers' official judgment and action."

It is next contended that if a check be an obligation it is not set out in this indictment with sufficient certainty.

The learned District judge who held this indictment insufficient used this language: "The date of this check is not given, nor does the indictment give or purport to give the substance of the language used in the check. Here the gravamen of the charge is the tendering of the check, and this general description, without giving the date of the instrument or the substance of the language contained therein, is clearly insufficient to protect the defendant in case of a subsequent indictment for the same offense, or to show that the check was in fact an obligation for the payment of money."

I am unable to find any authority which holds that written instruments shall be set out in *haec verba*, excepting in cases of forgery and libel. In all other cases; as in larceny, false pretenses, etc., the instrument may be described by a general designation. See Wharton's *Cr. Pl. & Pr.*, pp. 117 to 141 (8th ed.); 2 Bishop's *New Crim. Prac.*, 732; McLain's *Criminal Law*, sect. 595.

The error in the opposite contention lies in assuming that the gravamen of the offense is the means or instrument used as a bribe. The gist of the offense is the corruption of the public officer; the character and description of the means used are simply incidental. The precise question involved was before the Supreme Judicial Court of Massachusetts in the case of *Commonwealth v. Donovan*, 170 Mass., 228, where the bribe was in the form of promissory notes. The court said: "The objection taken . . . that the indictment is defective in not stating by whom the promissory notes charged

to have been given to Lang were made is unsound. The indictment charges the gift of promissory notes. Such notes in law are property, and are sufficiently designated by the name given to them in the indictment, which is a name in common use and everywhere understood. To have added a further allegation, stating by whom the notes were made or executed, would have been matter of unnecessary description."

To the statement of the District Court of New York that the description of the checks is "clearly insufficient to protect the defendant in case of a subsequent indictment for the same offense," it is a sufficient answer that under the pleas of *autrefois acquit* or *autrefois convict* parol evidence is always admissible on the question of the identity of the two offenses. The language of Mr. Justice Brewer, in *Dunbar v. United States*, 156 U. S., at p. 191, disposes of this objection: "It is true some parol testimony might be required to show the absolute identity of the smuggled goods, but such proof is often requisite to sustain a plea of once in jeopardy. It is no valid objection to an indictment that the description of the property in respect to which the offense is charged to have been committed is broad enough to include more than one specific article."

While counts 2, 3, and 4 do not describe the obligation as being "for the payment of money," as does the first count, yet in the description of the check, which is the obligation, it is stated to be "for the sum of four hundred and eighteen dollars and thirty-six cents in money, payable to him, the said George W. Beavers."

3d. It is next contended that even if the check was an obligation, and properly described, it was a void one and of no value, and hence could not perform the function of a bribe.

But does section 5501 require that the "obligation" be alleged to be of value? There are three classes of instrumentalities for debauching an official set out in this section:

First. Any money.

Second. Any contract, promise, undertaking, obligation, gratuity, or security for the payment of money.

Third. Any (contract, etc.), for the delivery or conveyance of anything of value.

In the decision of the district judge in New York in the case heretofore cited, it is reasoned that "the check tendered by Green to Beavers, having been drawn and tendered for an illegal and corrupt purpose, was void, worthless," and hence could not be available as a bribe. But is it not possible that Congress had in mind this very argument when it classified the instrumentalities of bribery, defining one class as contracts and obligations for the payment of money, with no provisions as to their value or validity? To hold otherwise ascribes to Congress the sardonic humor of drafting a statute to prevent the acceptance of any bribe by an officer of the Government in the form of a contract, promise, undertaking, obligation, gratuity, or security, and, by the very fact that such contract, promise, undertaking, obligation, gratuity, or security would be under the law illegal and non-enforceable, furnishing the recreant official with a complete defense to an

indictment. This indictment is framed under that clause of the statute which requires no allegation of value to be given the bribe.

Moreover, it has been held that such a defense could not avail the defendant in such a case. To quote the language of the court in the case of *People v. Willis*, 54 N. Y. Sup., 52, which was an indictment for bribery, where the same defense was urged: "The fact that the notes were void because of the corrupt agreement under which they were given can not avail the defendant. Public policy forbids the enforcement of a promise to pay a bribe, but no court has ever held that one exacting such a promise is therefore relieved of the penal consequences."

Again, checks are negotiable, and in the hands of a bona fide holder for value would not be subject to defenses which might be available between maker and payee. 2 Daniel's Neg. Inst., 4th ed., 1651-2; *Bull v. Bank*, supra. This point was determined in the case of *Commonwealth v. Donovan*, 170 Mass., at page 239, where the bribe was in the form of promissory notes and the court held that as they might pass into the hands of bona fide holders for value, thus cutting out the defense of illegality, they could not be said to be void and of no value.

I therefore conclude that this indictment fully complies with the provision of the constitution that a defendant in a criminal case shall "be informed of the nature and cause of the accusation" against him; that it fully complies with the requirements of the Supreme Court in the case of *United States v. Cruikshank et al.*, 92 U. S., 542, where it is said: "The object of the indictment is, first, to furnish the accused with such a description of the charge against him as will enable him to make his defense, and avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and, second, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had."

To hold this indictment void on the ground that it fails to charge the commission of a crime under the statute would be to sacrifice the administration of public justice to excessive subtlety and over-strained observance of form.

The demurrer will be overruled, with leave to the defendant to plead.

No. 23,928 charges Beavers and Green with conspiracy, under section 5440 of the Revised Statutes of the United States, to commit an offense against the United States. The inducement is identical with that set out in No. 23,926, already considered; the object of the conspiracy is charged as follows: "The said George E. Green then and there promised and agreed with the said George W. Beavers, in behalf of the said International Time Recording Company, that upon each and every time-recording device of the kind aforesaid then and thereafter ordered from the said . . . company, through the procurement and influence of the said . . . Beavers, while he, the said . . . Beavers, continued to be an officer as aforesaid and a person acting as aforesaid, the said . . . company would pay to the said . . . Beavers, for his own private use and benefit, a commission of 10 per cent of the purchase price

thereof." Eleven overt acts are set out as done in pursuance of this conspiracy.

It was contended in argument by counsel for the defendant that this indictment was fatally defective in that, being a charge of conspiracy to commit the offense provided against by section 5451 or by section 5501, it failed to allege that the agreement between Beavers and Green was made "with intent to influence" the official decision or action of said Beavers. And there is no question but that both said sections require the allegation of such an intent in charging a crime thereunder. But where the crime charged is a conspiracy, under section 5440, to commit the offense defined by section 5451, or by section 5501, it may be questioned whether the same particularity in setting out the crime which was the object of the conspiracy is required as where the indictment is framed to charge the crime itself. But this question need not be decided in this case. Upon the argument, the attorney for the United States expressly disclaimed that the object of the conspiracy was to commit the offense prescribed by either section 5451 or section 5501, and insisted that it charged a conspiracy to procure Beavers to commit the common law crime of misconduct in office. And that that offense is sufficiently stated, I have no doubt. As said by the Court of Appeals, in *Tyner v. United States*, 23 App. D. C., at page 358: "The failure of defendant to perform his official duty under the circumstances and for the reasons charged is sufficient to support an indictment for official misconduct as an offense by the common law. Whether an indictment for the common law offense should charge that the misconduct was wilful, malicious, or corrupt, we need not stop to inquire, for the indictment is not for that offense, but for conspiracy under the statute." 32 Wash. Law Rep., 258.

As I have stated, the indictment charges, with sufficient certainty, the offense of misconduct in office. It alleges the official position and duties of Beavers; an agreement between him and Green that upon every time recording device ordered from the company represented by Green *through the procurement and influence of Beavers* while the latter was an officer of the Government, said company would pay Beavers, *for his own private use and benefit, a commission of ten per cent of the purchase price.*

Inasmuch as the criminal intent with which the agreement was entered into by Beavers can be *prima facie* inferred from the facts stated, it need not be specifically averred, as the offense is not defined by a statute which makes the intent a part of the definition of the crime. Wharton Cr. Pl. & Pr., 8th ed., sect. 163a.

Nor was it necessary to aver that the agreement was "unlawful," "wilful," or "corrupt"; for there is no statute making such qualities essential to a description of the crime, and the facts charged have no other conclusion possible than that the agreement was unlawful, wilful, and corrupt. *Id.*, sect. 269.

It is next contended that counts 3, 6, 8 and 11 of the indictment are bad for failure to sufficiently describe the checks which are alleged to have been given by Green to Beavers. The description given is as follows: "unlawfully did give to the said George W. Beavers his, the

said George E. Green's, check upon the Knickerbocker Trust Company of New York City, New York, for the sum of three hundred and twenty-five dollars," etc. Except for the substitution of Seventh National Bank for Knickerbocker Trust Company, and changes in amounts, the averments of counts 6, 8, and 11 are the same.

The same objection is urged to counts 5, 7, and 10, where the averment is the endorsement by Green of a check drawn by the International Time Recording Company on a certain date for a certain sum to the order of said Green.

For the reasons I have already given in the case of indictment No. 23,928, I regard these counts as sufficiently definite. I know of no rule of criminal pleading requiring written instruments in such cases to be set out in *haec verba*.

The demurrer will be overruled, with leave to the defendant to plead.

In the case of indictment No. 23,940, three reasons were urged why it should be held invalid:

1st. Because, while it is an indictment against Beavers and Green, under section 5440, to defraud the United States, there is no proper allegation that Beavers was a party to the conspiracy.

2d. Because it does not appear from the indictment that the Government was actually defrauded or would have been defrauded by the conspiracy and the overt acts thereunder.

3d. Because the checks are not sufficiently described in the different counts.

1st. The allegation of the conspiracy is as follows: that Beavers and Green "unlawfully did conspire, combine, confederate, and agree together, and with divers other persons to the grand jurors unknown, knowingly to defraud the said United States in the manner following, that is to say: The said George E. Green then and there did promise *and agree with the said,*" Beavers, etc. The point made is that there is no allegation of agreement on the part of Beavers.

It does not seem to me necessary to cite authority to the effect that the legal meaning of the word "agree" or "agreement" is a meeting of the minds of at least two parties. When it is stated that Green "agreed" with Beavers, *ex vi termini*, it conclusively avers that Beavers agreed with Green. As said by the Supreme Court of Missouri in *State v. Meysenburg*, 171 Mo., at page 30: "It need not be stated that an agreement presupposes at least two parties, as one party can not make an agreement with himself alone."

2d. Does the indictment allege a conspiracy to defraud the United States?

The allegation on this point is as follows: "Whereby the said United States would be and were defrauded of the sums of money so paid as commissions, by reason of the fact that but for the payment thereof, and but for the said unlawful agreement and its execution, the said time-recording devices could and would have been procured by the said George W. Beavers in his said official capacity, for the said Post-office Department, at prices less than the prices paid and to be paid therefor by the said Post-office Department by the amount of such commissions at least."

The indictment does aver that the United States was defrauded of the sums of money so paid to Beavers as commissions. This brings the pleading within the decision of the Court of Appeals in the case of *Lorenz et al. v. United States*, 24 App., at page 364: 32 Wash. Law Rep. 822.

Moreover, the indictment shows on its face that its agent and officer, Beavers, through whose procurement and influence the machines were purchased, was receiving from the seller 10 per cent. of the purchase price paid by the Government, whose interests he was in duty bound to guard. This constituted a fraud upon the United States. This fraud was measured, not only by the sums of money which Beavers received for betraying his trust, and which were legally the property of the United States, but also by the loss of the services of a trusted agent and official. This brings the case within a line of recent decisions which are binding upon this court. *Hyde v. Shine*, 199 U. S., 62; *Tyner v. U. S.*, 23 App. D. C., 324: 32 Wash. Law Rep., 258; *Colladay v. Palmer*, 18 App. D. C., 426: 29 Wash. Law Rep., 532; *U. S. v. Bunting*, 82 Fed., 883; *U. S. v. Curley*, 82 Fed., 128.

In the first case above cited the court said: "Whatever may be the rule in equity as to the necessity of proving an actual loss or damage to the plaintiff, we think a case is made out under this statute (section 5440) by proof of a conspiracy to defraud, and the commission of an overt act, notwithstanding the United States may have received a consideration for the lands and suffered no pecuniary loss."

3. So far as the objection that the checks are not sufficiently described in the different counts, reference is made to the decision as to indictment No. 23,926, *supra*.

For the foregoing reasons the demurrer to this indictment will be overruled, with leave to the defendant to plead.

I do not recall that any questions are raised by the demurrers filed to indictments Nos. 23,959 and 23,961 different from those already discussed in the foregoing opinion. The demurrers to these indictments will likewise be overruled, with leave to plead.

A statute requiring all bonds given for the faithful performance of official or fiduciary duties, or the faithful keeping, applying, or accounting for funds or property, to be executed by a surety company is held, in *State ex rel. McKell v. Robins* (Ohio), 69 L. R. A. 427, to be unconstitutional.

A deed without power of revocation, from a parent who is incapacitated physically and weak mentally, to his daughter who has for some time had the care of him, made without the benefit of competent and independent advice, is held, in *Slack v. Rees* (N. J. Err. & App.), 69 L. R. A., 393, to be properly set aside by equity.

An agent authorized to issue policies is held, in *Richard v. Springfield F. & M. Ins. Co. (La.)*, 69 L. R. A., 278, to bind the company by all waivers, representations, or other acts within the scope or requirements of his business, unless the insured has notice of the limitation of his power.

## Supreme Court of the District of Columbia.

### WASHINGTON BREWERY COMPANY

v.

HUGH COSGROVE.

SEVENTY-THIRD RULE; AFFIDAVIT OF DEFENSE; SET-OFF; DAMAGES FOR WRONGFUL SUING OUT OF INJUNCTION.

1. In an action at law to recover a balance due upon an account stated (the plaintiff's affidavit setting out the accounting, the agreement as to the amount due, and an order by the defendant to a third person to pay the amount), an affidavit of defense which merely denies the right of the plaintiff to recover against the defendant the whole of his claim or that he owes the plaintiff anything, is not sufficient to comply with the requirements of the 73d rule.
2. A claim for damages for the wrongful suing out of an injunction can not be made the basis of a plea of set-off in an action at law; the defendant, for such damages, being bound to pursue the remedy pointed out by Equity Rule 42 of this court.

No. 48,114, Law. Decided January 5, 1906.

HEARING on a motion for judgment under the 73d rule. Granted.

*Messrs. Birney & Woodard* for the plaintiff.

*Mr. John Ridout* for the defendant.

Mr. Justice BARNARD delivered the opinion of the Court:

In this case the plaintiff claims \$475.00 with interest from October 21, 1905, by declaration based upon the common counts.

The bill of particulars annexed shows that balance to have been agreed to as due on the said date, October 21, 1905, and the affidavit accompanying the declaration sets out the accounting between the plaintiff and the defendant, and the agreement as to said balance; and also an order upon one Henry J. Senay, to pay the plaintiff the said amount.

The defendant filed two pleas: the first, that he never undertook and promised as alleged; and second, a plea of set-off for \$616, based upon the failure of the plaintiff to pay damages said to have been occasioned by the wrongful suing out of an injunction in an equity cause in this court; the plea stating that the damages are "for breach of its undertaking to make good to the defendant all damages resulting from the inequitably suing out of an injunction in equity cause No. 25,795 in this court."

The affidavit accompanying the pleas fails to set out any grounds of defense such as are required by the 73d rule, to the plaintiff's claim, that is to say, the affidavit does not deny the alleged accounting, the balance found to be due the plaintiff, and the order on Senay to pay the same. It only denies the right of the plaintiff to recover against the defendant, the whole or any part of the plaintiff's claim, and states that the defendant does not owe the plaintiff anything.

The statements of the defendant in the affidavit may be merely conclusions of law, based upon the idea that the plaintiff owes him more than he owes the plaintiff. At any rate, they are not sufficient to comply with the 73d rule, which requires the defendant to state in such affidavit "in precise and distinct terms the grounds of his defense, which must be such as would, if true, be sufficient to defeat the plaintiff's claim in whole or in part."

The plaintiff has filed a motion for judgment under the 73d rule, for want of sufficient affidavit of defense, and so far as the first plea is concerned, it seems clear to my mind that the affidavit is not sufficient, and the plaintiff will be entitled to judgment, unless the plea of set-off can be maintained.

The argument of counsel on both sides pertains particularly to the plea of set-off and the affidavit in support thereof. Counsel for the plaintiff claims that the alleged cause of action in the plea of set-off is one founded on tort, and can not for that reason be made the subject of a claim in set-off under section 1563 of the Code.

Counsel for the defendant, however, claims that the set-off is based on a breach of an undertaking given by the plaintiff in the said equity cause, and that, therefore, the failure to pay the alleged damages renders the plaintiff liable to an action on a contract, and that he, therefore, has the right to set it off as a defense to the plaintiff's action in this case.

This contention, so far as it relates to the alleged cause of action being based upon a contract, is correct, for the plea, as well as the affidavit, sets up the undertaking and alleges a breach.

In the absence of any such undertaking, if damages resulted to the defendant by reason of the wrongful suing out of an injunction, any action to recover such damages would be in the nature of a tort, and such action could probably be maintained only in a case where the injunction proceeding was one instituted maliciously, and without probable cause.

If that were the case here, it is clear that under our statute such damages so resulting could not be made the subject of set-off in an action at law.

The equity proceeding is referred to in the defendant's plea and the affidavit, and it is probably brought into this case by such reference, so that the court in disposing of this motion would be authorized and permitted to examine that cause, and counsel have produced the papers therein, and referred to the same in argument as if they were a part of the record in this case. If this is correct, and the court may properly refer to that proceeding, it will be found that on November 13, 1905, the restraining order was dissolved, and the cause was referred to the auditor, to inquire and report what damages, if any, the said defendants or either of them had sustained by reason of the wrongful suing out of the said restraining order, and that question seems to be pending now before the auditor.

There may, however, be some question as to whether the court can properly take cognizance of this order, and the proceeding before the auditor, on consideration of this motion.

I think, however, there can be no doubt that the court must take notice of the 42d rule in equity, which requires a complainant to enter into such an undertaking as is set out in the plea in this case, and that rule requires that the complainant in such case, with his surety, shall stipulate in such undertaking, "that the damages may be ascertained in such manner as the justice shall direct, and that, on dissolving the injunction, he may give judgment thereon against the principal and sureties for said dam-

ages in the decree itself dissolving the injunction. This gives the defendant in the injunction suit a speedy and complete remedy to recover his damages, and it is questionable whether he can have any other remedy than that, because the complainant in such equity suit is required to make such stipulations as the condition for obtaining the injunction; and having submitted to such terms as the court required, and that court having jurisdiction, it may be, in fairness to the complainant, that the defendant is equally bound to pursue his remedy for the damages in the manner pointed out by the said rule, so that if the defendant in this case had not already obtained an order of reference to the auditor in the equity cause to ascertain his damages, he has ample authority to do so and will, I think, be compelled to accept that course of action in order to ascertain and recover the damages sustained. I am, therefore, inclined to grant the plaintiff's motion for judgment, notwithstanding the defendant's pleas and affidavit.

#### Subdistricts of Justices of the Peace.

The Supreme Court of this District, sitting in general term, has promulgated an order rearranging the boundary lines of the subdistricts presided over by justices of the peace. This rearrangement is made necessary by the reduction in the number of justices from ten to six. The new subdistricts are as follows, the center of the street being intended wherever a street is mentioned as a boundary line:

Subdistrict No. 1, Charles S. Bundy—Beginning at the intersection of Fourth and D streets northwest; thence north with Fourth street to F street north; thence west with F street to Fifteenth street west; thence north to Pennsylvania avenue; thence westerly along Pennsylvania avenue to Twenty-third street west; thence north with Twenty-third street to Rock Creek; thence northward with Rock Creek to the District line; thence southwest with the District line to the Potomac River; thence southeast with the Potomac River to B street extended west; thence east with B street to Sixth street west; thence north to D street and east to place of beginning. Office to be located in the Columbian Building.

Subdistrict No. 2, Samuel C. Mills—Beginning at the intersection of Tenth and F streets northwest; thence west with F street to Fifteenth street west; thence north to Pennsylvania avenue; thence westerly along Pennsylvania avenue to Twenty-third street west; thence north on Twenty-third street to Rock Creek; thence northward with Rock Creek to the District line; thence northeast and southeast along the District line to Brightwood avenue; thence south with Brightwood avenue to Rock Creek Ford road; thence southward along Piney Branch road, Fourteenth street road, and Fourteenth street to Florida avenue; thence easterly with Florida avenue to Tenth street west; thence south with Tenth street to the place of beginning. Office to be located at 1205 G street northwest.

Subdistrict No. 3, Thomas H. Oallan—Beginning at the intersection of Fourth and D streets

northwest; thence north on Fourth street to F street; thence west on F street to Seventh street west; thence north with Seventh street to New York avenue; thence northeast with New York avenue to North Capitol street; thence north with North Capitol street to Florida avenue; thence northward with Lincoln road, Harewood road, and Third street extended to the Bates road; thence easterly with the Bates road to Sargent road; thence south to the Bunker Hill road, and easterly with the Bunker Hill road to the District line; thence southeast and southwest with the District line to the Bennings road; thence westerly with the Bennings road to Fifteenth street east; thence southwest with Maryland avenue to D street north; thence west with D street to the place of beginning. Office to be located at 627 F street northwest.

Subdistrict No. 4, Luke C. Strider—Beginning at the intersection of John Marshall Place and D street northwest; thence south with John Marshall Place to Pennsylvania avenue; thence southeast with Pennsylvania avenue to First street west; thence south with First street to B street south; thence east with B street to First street east; thence south on First street to Virginia avenue; thence southeast with Virginia avenue to Ninth street east; thence south with Ninth street to the Anacostia River or Eastern Branch; thence southerly with the Anacostia and Potomac rivers to the District line; thence northeast with the District line to the Bennings road; thence westerly with the Bennings road to Fifteenth street east; thence southwest with Maryland avenue to D street north; thence west with D street to the place of beginning. Office to be located in the Fendall Building.

Subdistrict No. 5, Lewis I. O'Neal—Beginning at the intersection of John Marshall Place and D street northwest; thence south with John Marshall Place to Pennsylvania avenue; thence southeast with Pennsylvania avenue to First street west; thence south with First street to B street south; thence east with B street to First street east; thence south with First street to Virginia avenue; thence southeast with Virginia avenue to Ninth street east; thence south with Ninth street to the Anacostia River or the Eastern Branch; thence southwest with the Anacostia River to the Potomac River; thence with the Potomac River northwest to B street north, extended; thence east along B street extended, and B street to Sixth street west; thence north on Sixth street to D street north, and thence east to the place of beginning. Office to be located at 456 D street northwest.

Subdistrict No. 6, Robert H. Terrell—Beginning at the intersection of Seventh and F streets northwest; thence north with Seventh street to New York avenue; thence northeast with New York avenue to North Capitol street; thence north with North Capitol street to Florida avenue; thence northward with Lincoln road, Harewood road and Third street extended to the Bates road; thence easterly with the Bates road to the Sargent road; thence south with the Sargent road to the Bunker Hill road; thence easterly with the Bunker Hill road to the District line; thence northwest with the District line to Brightwood avenue; thence south with Brightwood avenue to Rock Creek Ford road; thence southward along Piney Branch road,

Fourteenth street road and Fourteenth street to Florida avenue; thence easterly with Florida avenue to Tenth street west; thence south with Tenth street to F street north; and thence east to the place of beginning. Office to be located at 911 G street northwest.

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### RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

### Legal Notices.

#### FIRST INSERTION.

In the Supreme Court of the District of Columbia.  
John A. Antrim, Guardian, v. Loris E. Antrim et al.  
In Equity, No. 25,247.

John Ridout, trustee, having reported the sale to Herbert C. Graves of the east fourteen feet eight and two-third inches front, by a depth of ninety-eight feet, of original lot four, square nine hundred and ninety, in the city of Washington, District of Columbia, for twenty-four hundred and fifty dollars, it is this 31st day of January, 1906, ordered that said sale be and it is finally ratified and confirmed, unless cause to the contrary be shown on or before February 28, 1906; provided a copy of this order be published once a week for three successive weeks before said last mentioned date in The Washington Law Reporter. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 5-St

R. B. Behrend and Nauck & Nauck, Attorneys

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of J. K. Wilhelmina Kirchner, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 31st day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 31st day of January, 1906. ALBERT O. KIRCHNER, 715 Girard st.; FRANKLIN B. KIRCHNER, 85 O st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 8794. Administration. [Seal.] 5-St

**Legal Notices.**

**E. H. Thomas, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**  
**Estate of John R. Wright, Deceased.**  
 No. 13,383. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Edward H. Thomas, it is ordered, this 29th day of January, A. D. 1906, that notice be and hereby is given to Louis Edward Wright, and to all others concerned, to appear in said court on Monday, the 5th day of March, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **[Seal]** day. **WENDELL P. STAFFORD, Justice.**  
 Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 5-3t

**J. J. Darlington, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding Probate Court.**  
**In the Matter of the Estate of Claas Denekas, Deceased.** No. 13,406. Admn. Doc.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased and for letters testamentary on said estate, by Ernest A. Sellhausen and Gustav H. Schulze, it is ordered, this first day of February, A. D. 1906, that notice be, and hereby is, given to Annie Wortman, Beatrice Ten Wheelborg, Anthony Apfeld, Theodore Apfeld, and Helen Hensel, and to all others concerned, to appear in said court on Monday, the 19th day of March, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **[Seal]** day. **WENDELL P. STAFFORD, Justice.**  
 Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 5-3t

**[Filed January 8, 1906. J. R. Young, Clerk.]**  
**Thos. C. Bradley, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Lena A. Walker, Complainant, v. Stanley D. Walker,**  
**and Mary Gonzales, Defendants.**  
 Eq. Doc. No. 25,856.

**ORDER OF PUBLICATION.**

The object of this suit is to procure a decree of divorce, a vinculo matrimonii, from the defendant, Stanley D. Walker. On motion of the complainant, it is this 3d day of January, A. D. 1906, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; provided a copy of this order appear in The Washington Law Reporter and The Washington Post newspapers once a week for three consecutive weeks; otherwise the cause will be proceeded with as in case of default. **THOS. H. ANDERSON, Justice.** A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 5-3t

**E. B. Hay, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**  
**Estate of George D. Scott, Deceased.**  
 No. 13,372. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Alvina R. Scott, it is ordered this 31st day of January, A. D. 1906, that notice be and hereby is given to the heirs at law of said deceased, and to all others concerned, to appear in said court on Monday, the 5th day of March, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **[Seal]** day. **WENDELL P. STAFFORD, Justice.**  
 Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 5-3t

**Legal Notices.**

**W. C. Martin, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Henry W. Beamer, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 18th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of January, 1906. **WILLIAM C. MARTIN, 503 D St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,421. Administration. [Seal.]** 5-3t

**Jos. L. Tepper, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Ignatius S. Spalding, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of February, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of February, 1906. **MARY A. SPALDING, 310 15th St. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,441. Adm. [Seal.]** 5-3t

**A. Leftwich Sinclair, Attorney**

**[Filed January 30, 1906.]**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Special Term as a District Court of the**  
**United States for the District of Columbia.**

In the matter of the payment of damages resulting to adjacent property from changes in the grade of streets, avenues, and alleys authorized by the act of Congress approved February 28, 1903, relating to the construction of a Union Railroad Station in the District of Columbia. No. 671, District Court Docket No. 2. Notice is hereby given that we, the undersigned, having been designated and appointed by the Supreme Court of the District of Columbia, holding a special term as a United States District Court for the District of Columbia, as a commission to appraise the damages resulting to adjacent property from changes in the grade of streets, avenues, and alleys authorized by the act of Congress approved February 28, 1903, relating to the construction of a Union Railroad Station in the District of Columbia, will meet at 10.30 o'clock A. M. on Monday, the 12th day of March, A. D. 1906, at the United States Court House (City Hall), in the District of Columbia, in a room to be assigned us by the United States marshal for said District, for the purpose of viewing the property affected by the changes in the grade of the following-named streets, avenues, and alleys, and hearing testimony touching the damages resulting to real property from said changes of grade, in accordance with the terms and provisions of the act of Congress approved April 22, 1904, entitled "An act to provide for payment of damages on account of changes due to construction of the Union Station, District of Columbia," to wit: M street northeast, between First and Fourth streets; H street northeast, between Second and Third streets, in front of square numbered seven hundred and fifty-one (751); H street northeast, between Second and Third streets, and Second street northeast, between G and H streets, around square numbered seven hundred and fifty-two (752); alley in square numbered six hundred and twenty-five (625), bounded by Massachusetts avenue, North Capitol, and G streets northwest; Massachusetts avenue northwest, between North Capitol street and New Jersey avenue; F street northwest, between North Capitol and New Jersey avenue. All owners of real property damaged by the changes in the grade of said streets, avenues, or alleys will file a petition with us, in this cause, for an allowance of damages within sixty (60) days after the said 12th day of March, A. D. 1906. The aforesaid act of Congress approved April 22, 1904, provides that upon the failure of any such owner to thus present his claim, within said period, his right to do so shall cease and determine. **CHAS. A. BAKER, GEORGE W. MOSS, GEORGE SPRANSY, Commission to Appraise Damages. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk.** 5-3t



## Legal Notices

**Charles S. Shreve, Jr., Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**  
**Estate of Mary A. Johnson, otherwise Mary A. Bridges, Deceased.**

No. 13,410. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Thomas S. Sergeant, it is ordered, this 30th day of January, A. D. 1906, that notice be and hereby is given to the unknown next of kin, and the unknown heirs at law of the said Mary A. Johnson (otherwise Mary A. Bridges), and to all others concerned, to appear in said court on Tuesday, the 6th day of March, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] **WENDELL P. STAFFORD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 5-3t

**Stuart McNamara, Attorney**

**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**

**Mathew O'Callaghan, Complainant, v. Walter O'Callaghan et al., Defendants.** In Equity, No. 25,411.

Upon consideration of the report of trustees filed herein, reporting the sale of the property mentioned herein, to wit, 501 Twentieth street northwest, Washington, D. C., to Mathew O'Callaghan, the complainant herein, and it appearing that said sale was had pursuant to instructions embodied in a decree herein, and that the said sale was fair, it is, this 24th day of January, A. D. 1906, ordered that said trustees be, and they hereby are, authorized and directed to accept the offer of said Mathew O'Callaghan, as set forth in said petition, and that said sale to said Mathew O'Callaghan, at and for the sum of four thousand one hundred dollars (\$4,100.00), crediting said O'Callaghan thereon with the sum of five hundred dollars (\$500.00) out of his distributive share as interest as tenant in common in said estate, be, and the same hereby is, ratified and confirmed, unless cause to the contrary be shown on or before the 25th day of February, A. D. 1906. Provided a copy of this order be published in The Washington Law Reporter and Washington Star once a week for three successive weeks before said day. By the court: THOS. H. ANDERSON, Justice. A true copy. Test:

J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 5-3t

**W. M. Ellison, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Benjamin F. Kincannon, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 29th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of January, 1906. **MATTIE A. KINCANNON**, 805 6th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,390. Administration. [Seal.] 5-3t

**John B. Larner, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Randolph L. Elliot, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of January, 1906. **THE WASHINGTON LOAN AND TRUST CO.**, by Andrew Parker, Treasurer. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,392. Administration. [Seal.] 5-3t

## Legal Notices.

**Delmas C. Stutler, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Richard Rothwell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 26th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 28th day of January 1906. **LILLIE ROTHWELL**, 28 9th st. N. E.; **WILLIAM WAGNER**, 207 and 207 1/2 Pa. ave. S. E. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,436. Administration. [Seal.] 5-3t

**Brandenburg & Brandenburg, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of R. Catharine Cain, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 19th day of February, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 25th day of January, 1906. **BERNARD J. CAIN**, by F. Walter Brandenburg, Attorney. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,734. Administration. [Seal.] 5-3t

[Filed January 2, 1906. J. R. Young, Clerk.]

**J. H. Smith, Solicitor**

**In the Supreme Court of the District of Columbia,**  
**Holding a Special Term in Equity.**  
**Madora Hunter, by her Next Friend, Carmencita Williams, Complainant, v. Lawrence N. Hunter et al., Defendants.** Equity No. 25,899.

The object of this suit is to have a trustee appointed to hold the title to lot 10, square 234, in the District of Columbia, and collect the rents and profits thereof, for Madora Hunter until she becomes 21 years of age, in place of Cornelius Hardin Hunter, trustee, deceased. On motion of complainant, by her solicitor, J. H. Smith, it is, this 2d day of January, 1906, ordered, that the defendants hereto, **Lawrence N. Hunter**, **Ollie Hunter**, **Norman L. Hunter**, and **Margaret Hunter**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise this cause be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington

[Seal] Law Reporter and Washington Times prior to said return day. **THOS. H. ANDERSON**, Associate Justice. A true copy. Test: J. R. Young, Clerk, by T. E. Cunningham, Asst. Clerk. 5-3t

**J. J. Darlington, Attorney**

**In the Supreme Court of the District of Columbia,**  
**Holding Probate Court.**  
**In the Matter of the Estate of Samuel M. Yeatman, Deceased.**

No. 13,413. Admn.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Annie V. Yeatman, it is ordered, this 1st day of February, A. D. 1906, that notice be and hereby is given to Charles R. Yeatman, and to all others concerned, to appear in said court on Monday, the 19th day of March, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] **WENDELL P. STAFFORD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 5-3t



**Legal Notices.****SECOND INSERTION.**

**Edward L. Hillyer, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Harry U. Walton, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Wednesday, the 28th day of February, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 23d day of January, 1906. **UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA**, by Edward L. Hillyer, Attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,746. Administration. [Seal.] 4-St

**Carlisle & Johnson, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Elizabeth McLaughlin, also known as Elizabeth A. McLaughlin, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 18th day of February, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 23d day of January, 1906. **GEORGIA ANNE O'NEILL**, by Carlisle & Johnson, attorneys. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 10,117. Admn. [Seal.] 4-St

**Jesse H. Wilson, Solicitor**

**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**

**John William Frey et al., Complainants, v. William H. Frey et al., Defendants.** Equity No. 22,056.

Jesse H. Wilson and Levin S. Frey, trustees, having reported an offer by George S. Knott, Samuel T. Knott, and William J. Knott, to purchase for the sum of thirteen hundred and fifty (1850) dollars, cash, the south half part of lot numbered seven (7) in square numbered one (1) in the city of Washington, District of Columbia, it is this 24th day of January, 1906, ordered that said offer be accepted and that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 26th day of February, 1906, a copy of order to be published in The Washington Law Reporter once a week for three successive weeks before said day. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wma. F. Lemon, Asst. Clerk. 4-St

**Irwin B. Linton, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**Estate of Laura C. Dodge, Deceased.**  
**No. 13,261. Administration.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by William H. Saunders, it is ordered, this 22d day of January, A. D. 1906, that notice be and hereby is given to the unknown heirs of Laura C. Dodge, deceased, and to all others concerned, to appear in said court on Monday, the 26th day of February, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **WENDELL P. STAFFORD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 4-St

**Legal Notices.**

**Edward L. Gies, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**In Re the Estate of Conrad Briel, Deceased.**  
**Administration, No. 13,890.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by William H. Briel, it is this 23rd day of January, A. D. 1906, ordered that notice be and hereby is given to Engelhard Briel, residing at Marburg, Germany, to appear in said court on Friday, the 2nd day of March, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **WENDELL P. STAFFORD, Justice.** A true copy. Attest: James Tanner, Register of Wills. 4-St

**John S. Alleman, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Harriet Reamer, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of January, 1906. **WILLIAM F. REAMER**, 907 New York Ave., N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,430. Administration. [Seal.] 4-St

**Barnard & Johnson, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of Alonzo J. Eaton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of January, 1906. **ALONZO B. EATON**, 1329 M st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,248. Administration. [Seal.] 4-St

**Charles W. Darr, Richard A. Curtin, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Mary E. Cook, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of January, 1906. **MATTHEW E. COOK**, Benning, D. C. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,247. Administration. [Seal.] 4-St

**Frank J. Wissner, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Mary A. Hoover, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of January, 1906. **WILLIAM THACKARA POWELL**, 1609 31st st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,388. Administration. [Seal.] 4-St

**Legal Notices.**

**Wm. H. Linkins, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Matthew Murphy, Deceased.**  
**No. 13,398. Administration.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Mary H. Murphy, it is ordered, this 25th day of January, A. D. 1906, that notice be and hereby is given to the unknown heirs and next of kin of said Matthew Murphy, deceased, and to all others concerned, to appear in said court on Wednesday, the 7th day of March, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before

[Seal] said return day. **WENDELL P. STAFFORD,** Justice. Attest: **Wm. C. Taylor,** Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 4-3t

**Chas. T. Hendler, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**In Re Estate of Susan Turner, Deceased.**  
**No. 12,723. Adm. Doc. 33.**

It appearing to the court that the notification as to trial of the issues in the case, relating to the validity of the paper writing dated the 17th day of January, 1901, purporting to be the last will and testament of Susan Turner, deceased, has been returned as to Ella Elroy, Ida German, Sarah Starnell, Annie Gill, Harry Simms, William Simms, Lillie Hall, Sallie Eberhart, Edna Clark (an infant), Mary English, John W. Elliott, Virginia McLane, Lillie Mills, and the unknown heirs at law and next of kin of said Susan Turner, deceased, "not to be found," it is thereupon by the court, this 19th day of January, A. D. 1906, ordered that the issues heretofore framed in this cause be, and they hereby are, set down for trial in this court on the 19th day of February, A. D. 1906, and that the substance of the issues, as shown in the margin of this order, and the date fixed for the trial be published in The Washington Post twice a week for four weeks, and in The Washington Law Reporter once a week for four weeks. **WENDELL P. STAFFORD,** Associate Justice.

ISSUES.  
 1. Was the paper writing propounded as the last will and testament of Susan Turner, deceased, bearing date the 17th day of January, 1901, executed by her in due form of law? 2. Was the said Susan Turner, at the time of executing the said paper writing, of sound and disposing mind and capable of executing a valid deed or contract? 3. Was the execution of said instrument by the said Susan Turner procured by the fraud of Harry J. McGowan and Jesse A. McGowan, or either of them, or of any other person or persons? 4. Was the execution of said instrument by said Susan Turner procured by the undue influence of said Harry J. McGowan and Jesse A. McGowan, or either of them, or of any other person or persons? A true copy. Attest: **JAMES TANNER,** Register of Wills. 4-4t

**Francis S. Maguire, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Thomas Taylor, Deceased.**  
**No. 13,391. Administration.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Margaret E. Taylor, it is ordered, this 23d day of January, A. D. 1906, that notice be and hereby is given to Elizabeth Padgett, and to all others concerned, to appear in said court on Monday, the 26th day of February, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day. **WENDELL P. STAFFORD,** Justice. Attest: **James Tanner,** Register of Wills for the District of Columbia, Clerk of the Probate Court. 4-3t

**Legal Notices.**

**Walter C. Clephane, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the State of New York and the District of Columbia respectively, have obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Swan M. Burnett,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers on or before the 25th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 25th day of January, 1906. **MARGARET BRADY BURNETT,** 916 Farragut Square, Wash., D. C. **VIVIAN BURNETT,** 225 West End ave., New York City. Attest: **WM. C. TAYLOR,** Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,437. Administration. [Seal.] 4-3t

**Irving Williamson, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Juno Stewart,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 18th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 18th day of January, 1906. **SAMUEL W. CURRIDEN,** Office of Center Market; **IRVING WILLIAMSON,** Columbian Bldg.; **LLOYD H. CHANDLER,** 214 Cal. ave. Attest: **JAMES TANNER,** Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,321. Administration. [Seal.] 4-3t

**Wm. M. Lewin, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Rebecca Lycett,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of January, 1906. **ETHAN ALLEN LYCETT,** 311 N. Charles st., Balto., Md. Attest: **JAMES TANNER,** Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,361. Adm. [Seal.] 4-3t

**John J. Brosnan, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Louisa Muse,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of January, 1906. **JAMES H. MUSE,** 444 1st N.W. Attest: **JAMES TANNER,** Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,401. Administration. [Seal.] 4-3t

**John J. Brosnan, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Thomas P. Kelley,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of January, 1906. **JOHN J. BROSNAN,** 432 La. ave. Attest: **JAMES TANNER,** Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,126. Administration. [Seal.] 4-3t

**Legal Notices.****Blair and Thom, Attorneys****In the Supreme Court of the District of Columbia,  
Holding a Probate Court.****In the Matter of the Estate of Augustine Heard,  
Deceased.****Probate No. 13,344.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for the probate of the last will and testament of said deceased as a will of real and personal property, and for letters testamentary upon said estate, by Augustine A. Heard, one of the executors named in said will, the other executor named in said will having declined to act and refused said appointment, it is this 24th day of January, 1906, ordered that notice be, and the same is hereby, given to H. Maxima von Brandt and John Heard, Junior, and all others concerned, to appear in said court on the 26th day of February, 1906, at 10 o'clock A. M., to show cause why said application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each week for three consecutive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. By the Court: WENDELL P. STAFFORD, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills, Clerk of the Probate Court. 4-3t

**Barnard & Johnson, Attorneys****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of John B. Simmons, Deceased.****No. 13,345. Administration.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Clara B. Simmons, it is ordered, this 25th day of January, A. D. 1906, that notice be and hereby is given to Mary Eliza McLeod, and to all others concerned, to appear in said court on Monday, the 26th day of February, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in the Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 4-3t

**THIRD INSERTION.****S. V. Hayden, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of John Shafer, Deceased.****No. 13,365. Administration.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Mary Irene Shafer, it is ordered, this 16th day of January, A. D. 1906, that notice be and hereby is given to Irene Baker, infant, and to all others concerned, to appear in said court on Monday, the 19th day of February, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in the Washington Law Reporter once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 3-3t

**Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of William C. Lewis, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of January, 1906. ANNA L. LEWIS, The Mendota. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,375. Administration. [Seal.] 3-3t

**Legal Notices.****Walter C. Clephane, Attorney****Supreme Court of the District of Columbia,****Holding Probate Court.****Estate of Wm. B. Brown, Deceased.****No. 11,108. Administration.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration de bonis non on the estate of Wm. B. Brown, by Weston Brown Flint, it is ordered, this 16th day of January, A. D. 1906, that notice be and hereby is given to Nannie C. Sabine, and to all others concerned, to appear in said court on Monday, the 19th day of February, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 3-3t

**George E. Fleming, Attorney****Supreme Court of the District of Columbia,****Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of George H. Weeks, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of January, 1906. CROSBY P. MILLER, Room 221, War Department. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,394. Administration. [Seal.] 3-3t

**Pennebaker & Jones, Attorneys****Supreme Court of the District of Columbia,****Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Henry Kuhn Hoff, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of January, 1906. ARTHUR FAIRBRIDGE HOFF, care of Pennebaker & Jones, 131 F st. N. W. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,399. Administration. [Seal.] 3-3t

**Edwin A. McIntire, Attorney****Supreme Court of the District of Columbia,****Holding Probate Court.****Estate of Martha McIntire, Deceased.****No. 13,367. Administration.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Edwin A. McIntire, the executor nominated in said will, it is ordered, this 16th day of January, A. D. 1906, that notice be and hereby is given to William E. McIntire and Henry Norman McIntire, whose exact residence is not known; but they are believed to be on the Pacific coast of the United States. They have not been heard from for two years. The last known address of William E. McIntire was, printer, Colfax, State of Washington, and of Henry N. McIntire was, poultry dealer, San Diego, California, and to all others concerned, to appear in said court on Monday, the 19th day of February, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 3-3t

**Legal Notices.**

**Richard A. Curtin, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Frances L. Kilroy**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **21st day of November, A. D. 1906**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this **18th day of January, 1906**. **JAMES J. KILROY**, 16 Eye st. N. E. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,239. Administration. [Seal.] 8-3t

[Filed January 12, 1906. J. R. Young, Clerk.]

**Geo. Francis Williams, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Ernestine Frank, an Infant, by Her Guardian, v.**  
**Lawrence Frank et al. No. 25,856. In Equity.**

**George Francis Williams, trustee, in the above entitled cause, having reported sale of lot 16 in Carpenter's subdivision of lots in square 818 unto Frances E. Jost for \$3,950.00, it is this 12th day of January, 1906, ordered that said sale be confirmed unless cause to the contrary be shown on or before the twelfth day of February next; provided this order be published once a week for three successive weeks before that day in The**

[Seal] **Washington Law Reporter. By the Court:**  
**THOS. H. ANDERSON, Justice. A true copy.**  
**Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk.** 8-3t

**Stanton C. Peelle, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the State of Pennsylvania, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Herman Haupt**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **17th day of January, A. D. 1907**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this **17th day of January, 1906**. **LEWIS M. HAUPT**, 107 N. 35th st., Phila., Pa. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,408. Administration. [Seal.] 8-3t

**Walter H. Marlow, Jr., Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Regina Roth Spicer**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **12th day of January, A. D. 1907**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this **12th day of January, 1906**. **WALTER H. MARLOW, JR.**, 438 9th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,408. Administration. 8-3t

**Reginald S. Huldekoper, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**Mary E. McElhannon, Complainant, v. J. Walter McElhannon and Catherine Burgess, Defendants. In Equity. No. 25,762.**

The object of this suit is to obtain a divorce from the bonds of marriage. On motion of the complainant, it is, this 9th day of January, A. D. 1906, ordered that the defendants, **J. Walter McElhannon** and **Catherine Burgess**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order is to be published in **The Washington Law Reporter** and **The Washington Times** once a week for three successive weeks.

[Seal.] **By the court: THOS. H. ANDERSON, Justice.**  
**A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk.** 8-3t

**Legal Notices.**

**Lemuel Fugitt, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Kate McCarten**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **17th day of January, A. D. 1907**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this **17th day of January, 1906**. **LEMUEL FUGITT**, 472 La. Ave. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,888. Admn. [Seal.] 8-3t

**FOURTH INSERTION.**

**L. Cabell Williamson, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**L. Cabell Williamson, Mary E. Fitch, Trustees, Complainants, v. The Unknown Heirs, Alienees, or Devises of John Davis, Henry Buford, and John H. Eaton, Defendants. Equity No. 25,681.**

The object of this suit is to perfect complainants' title to lot numbered and lettered "A" in J. B. Hollidge's subdivision of lots, in square numbered five hundred ten (510) in the city of Washington, District of Columbia, as said subdivision is of record in Book C. H. B., page 145, of the records of the office of the surveyor of said District. On motion of the complainants, it is, this 4th day of January, A. D. 1906, ordered that the defendants, the unknown heirs, alienees, or devisees of each of the following named persons, to wit: **John Davis, Henry Buford, and John H. Eaton**, cause their appearance to be entered herein, on or before the first rule day occurring after three months from the day of the first publication of this order; otherwise the cause will be proceeded with as in cases of default. Provided a copy of this order be published for three months, once a week for three successive weeks for the first month and twice a month for each of the two succeeding months, in **The**

[Seal] **Washington Law Reporter** and **Washington Post. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk.** jan 5-12-19; feb 2-9; mar 2-9

**EIGHTH INSERTION.**

**Ellwood O. Wagenhorst, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Mary Sherman McCallum, Rebecca Alexander, Complainants, v. Mary A. Ellis, Susan E. Hedlan, the Unknown Heirs at Law of Susan Decatur, Defendants. Equity. No. 25,785.**

The object of this suit is to establish the titles by adverse possession of the complainants to the south 35 feet of original lot 18 of square 198 in the city of Washington, District of Columbia. On motion of the complainants, by their solicitor, it is, by the court, this 7th day of November, A. D. 1905, ordered that the defendant, **Susan E. Hedlan**, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays occurring after the day of the first publication of this order; otherwise the cause, as to her, will be proceeded with as in case of default. And, it is, by the court, further ordered, this 7th day of November, A. D. 1905, that the unknown heirs at law of **Susan Decatur**, and each of them, cause their appearance to be entered herein on or before the first rule day occurring three months next after the date of the first publication of this order; otherwise the cause, as to them, will be proceeded with as in case of default. This order, before the appearance days named for the defendant, **Susan E. Hedlan**, and for the unknown heirs at law of **Susan Decatur**, respectively, shall be published once a week for four successive weeks, and twice a month for three successive months, in **The Washington Law Reporter** and **The Washington Evening Star. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk,**

[Seal] **By Wm. F. Lemon, Asst. Clerk.**  
 nov. 10, 17, 24; dec. 1, 15; jan. 5, 12; feb. 2, 9

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W.

# The Washington Law Reporter

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WASHINGTON, D. C. - - - FEBRUARY 9, 1906

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## DECISIONS BY THE COURT OF APPEALS THIS WEEK.

Carriers; Interstate Commerce; Defective Cars; Suit to Recover Penalties Under Act of April 1, 1896; Jurisdiction.

In *United States v. Baltimore and Ohio Railroad Company*, the action was brought by the United States to recover penalties for alleged violations by the defendant of the act of Congress, making it unlawful for any railroad company engaged in interstate commerce to use cars not provided with secure grab irons or handholds on the ends or sides of the car for greater security to men in coupling and uncoupling, the prescribed penalty being \$100 for each violation. The defendant demurred to the declaration on the ground that by the statute such suits may be brought only in the United States district courts in the several States, and the trial court sustained this contention. The Court of Appeals, in an opinion by Mr. Justice McComas, holds that the intent of Congress was to confer upon the Supreme Court of this District, holding a circuit court, jurisdiction to try such cases, and accordingly reverses the judgment of the court below, sustaining the demurrer.

### Partition; Insufficient Proof of Complainant's Title.

In *Smith v. Oseey*, the appeal was from a decree of the court below directing a sale of real estate for purposes of partition. The Court of Appeals, in an opinion by Mr. Justice McComas, holds the proof insufficient to sustain the bill and reverses the decree.

### Fraternal Orders; Dissolution of State Council; Order of Dissolution Held Void.

In *National Council, Junior Order of United American Mechanics, v. State Council of the District of Columbia, etc.*, the suit was brought by the appellant to enjoin the District Council from using the name or from professing to act as a State council of the order, on the ground that by proceedings had under the constitution and by-laws of the order the District council had been dissolved. On behalf of the defendant, it was contended that the decree of dissolution was void; and this contention was sustained by the court below (see opinion by Mr. Justice Wright, reported in 32 Wash. Law Rep. 728), and the bill dismissed. Its decree is affirmed by the Court of Appeals in an opinion by Mr. Justice McComas.

### Elevator Accident; Agency.

In *Sherwood v. Warner*, the action was to recover for injuries claimed to have been received while engaged in repairing an elevator in an apartment house owned by the defendant. While engaged in the work, the plaintiff directed the janitor of the building to pull the rope of the elevator; and by reason of the fact that the janitor caused the elevator to move in the direction opposite to that desired by the plaintiff the latter was injured. The trial court, holding that the janitor was acting as the agent of the plaintiff in carrying out his request, and not as the agent of the defendant, directed a verdict for the defendant. The Court of Appeals, in an opinion by Mr. Justice Duell, affirms the judgment.

### Conspiracy; Sufficiency of Indictment.

In *Geist et al. v. United States*, the appellants were convicted under an indictment charging them with conspiring to obtain money from local merchants by falsely representing that they were the agents of a mercantile gazette. The question involved on the appeal was as to the sufficiency of the indictment; and the Court of Appeals, in an opinion by Mr. Justice Duell, holds it sufficient to give both the accused and the court information as to the nature of the charge.

### Patents; Dismissal of Bill Affirmed.

In *Millett v. Allen*, the Court of Appeals affirms a decree of the court below dismissing a bill filed to establish the right of complainants to a patent, the application therefor having been denied by the Commissioner of Patents, whose decision was affirmed by the Court of Appeals. The opinion is by Mr. Chief Justice Shepard.

## Supreme Court of the District of Columbia.

JOSEPH G. WALSH, PETITIONER,

v.

HENRY B. F. MACFARLAND ET AL., COM-  
MISSIONERS OF THE DISTRICT OF  
COLUMBIA, DEFENDANTS.METROPOLITAN POLICE FORCE; CHARGES AGAINST  
MEMBER; GAMBLING; REMOVAL OF ACCUSED; CER-  
TIORARI.

1. A charge of gambling, preferred against a member of the Metropolitan Police Force, if sustained by sufficient evidence, will justify the trial board in dismissing the accused from the force, whether the gambling is shown to have taken place while he was on or off duty.
2. A charge of gambling, if sustained by sufficient proof, is sufficient cause for the removal of a member of the police force, whether or not he has been indicted for and convicted of the offense.
3. Where charges are preferred against a member of the police force, and there is some competent evidence of the truth of the charges, the weight and effect of such evidence is for the trial board in the first instance, and for the Commissioners on appeal; and the court can not, in a proceeding by certiorari, reweigh the testimony.

No. 47,689, Law. Decided January 27, 1906.

HEARING on an application for a writ of cer-  
tiorari. Denied.*Mr. W. J. Lambert* and *Mr. D. W. Baker* for  
the petitioner.*Mr. E. H. Thomas* and *Mr. F. H. Stephens* for  
the respondents.*Mr. Justice BARNARD* delivered the opinion  
of the Court:

The petition in this case states that the petitioner was appointed a private upon the Metropolitan Police Force, in this District, in April, 1901. That on April 4, 1905, charges were preferred against him in accordance with the act of Congress, approved February 28, 1901 (31 Stat. at Large, 820), in which charges it was alleged that he had been engaged in, and carried on a game of chance, known as "crap," with dice or "bones," and for wagers of money, in the seventh police precinct station, with one P. A. Hoffman, another private of class 1, in the said police force, at some time between September 1, 1904, and February 1, 1905.

And, also, that he had communicated to, and talked with, members of the said police force about the fact that he did so participate in said game of chance, with dice, as aforesaid.

There were two other charges made, one charging the petitioner in this case with having denied, under oath, to the Major and Superintendent of Police, that he had engaged in said game of chance, or that he had talked to any member of the police force to that effect, and the other charging said Private Hoffman with like misconduct.

Under the said charges the petitioner was cited to appear before the trial board, where a trial was had, and the said trial board found the petitioner guilty of the first and second charges named; that he appealed to the Commissioners from the decision of said trial board, and endeavored to present the question to the Commissioners as to the jurisdiction of the trial board to try him for said alleged offense, he

being at that time off duty; but that the Commissioners refused to entertain the point, and were about to act upon the finding, and order his dismissal from the force, which action the petition states would be contrary to law, and greatly prejudicial to his rights, the said trial board and said Commissioners having no jurisdiction to act in the matter; wherefore the petitioner asks for a writ of certiorari, requiring the respondents to certify the proceedings, and all the records relating to the said charges, to this court, to the end that the alleged findings and action may be quashed, canceled, or set aside.

In response to this petition the defendants make answer and state that they admit the charges of gambling made against the petitioner, and the charge that he afterwards talked with other members of the force about the same; and they aver that he was duly tried before the Police Trial Board, on said charges, where he appeared with counsel, and called witnesses in defense; and that he was convicted by the said board; that he appealed to them, as Commissioners, and they duly accorded him a hearing, but before any action was taken by them, he applied to this court for the writ of certiorari herein.

They file as part of their answer or return to the writ, the charges, and specifications, the testimony adduced on the hearing, the finding and recommendation of the said board, the appeal therefrom to the Commissioners, and the proceedings had before said Commissioners.

They further state that the manual of the Metropolitan Police Force contained, among others, the following rule:

"Gambling, in any form, by any member of the police force, in a station or elsewhere, is strictly forbidden."

That the petitioner was charged with the violation of said rule, and found guilty of that offense; and they further state that the petitioner was guilty of a gross breach of discipline in violating the said rule; and that his talking of the same with other members of the force afterwards was subversive of good discipline.

The office of a writ of certiorari is to bring before the court the record of some proceeding in some inferior court or tribunal, or before some officer exercising, or entitled to exercise, judicial or quasi-judicial functions, so that the court may determine whether such special tribunal had jurisdiction, or whether its action in such proceeding is according to the essential requirements of the law. *D. C. v. Burgdorf*, 6 App. D. C., 471.

The tribunals or officers whose action is sought to be reviewed in this proceeding are the trial board, consisting of an assistant corporation counsel and a captain and a lieutenant of police, designated by the Commissioners of the District of Columbia; and which trial board is provided for in the manual containing the rules and regulations of the Metropolitan Police Department of the District of Columbia, adopted by the said Commissioners, by virtue of authority vested in them by law, and the Commissioners of the District of Columbia, sitting as an appeal court, to consider appeals taken from the trial board.

The said manual provides that "in all cases

the trial board shall admit such testimony and evidence as will tend to establish the guilt or innocence of the accused."

The testimony in serious cases is required to be taken down by a stenographer and transcribed, and, on appeals to the Commissioners, the manual provides for a hearing upon the same testimony, and briefs or written arguments of the counsel, unless the Commissioners, for good cause shown, shall direct otherwise.

The manual also provides that charges shall be made upon oath, if made by other than the Commissioners or a member of the police force; and, when officially preferred, that full and complete specifications shall be given to enable the accused to intelligently make his defense.

The manual also provides certain causes for which any member of the force may be removed. Among the causes named is this, being the 13th:

"Gambling in any form by a member of the force in a station or elsewhere."

Another general cause alleged is the 11th:

"Conduct unbecoming an officer."

It is contended by the relator that the act of Congress of February 28, 1901 (31 Stat. at Lar., 819), gives to every policeman in the Metropolitan Police Force a right to retain his position until he has had a trial on written charges and competent testimony, such as would be required in a court of law, in case he should be indicted for any violation of the criminal laws of the land, and it is claimed that the record shows the testimony in this case to have been incompetent, because hearsay; and also that the charge of gambling was improperly made in form, because it specified no definite date, so as to afford the officer an opportunity to properly defend himself against the charge.

The act referred to has this provision, "that no removal from the police force shall be made except on written charges, and after an opportunity for defense on the part of the person against whom such charges may be made, but no person so removed shall be reappointed to any office in said police force."

The serious consequences to the officer, if he is removed, and the requirements as to making charges and conducting the trial, indicate that Congress intended to be exceedingly cautious in its provisions for depriving a police officer of his position; and for that reason the court is disposed to give more than ordinary consideration to the proceedings in this case.

It is claimed by the petitioner that he was off duty at the time of the alleged offense, and that such being the fact, the trial board was without jurisdiction to try him for the alleged offense of gambling.

The manual has certain rules which seem to exonerate members of the police force from liability to charges, if they are not violated while on active duty; for instance, the 12th paragraph of rule 11 says, "the use of profane or obscene language, while on active duty, or in or about a station house."

And the 3d paragraph under rule 49, provides that members of the force shall not, "while in uniform, enter a bar room, etc."; and paragraph 4, shall not "smoke while in uniform, or on active duty, etc."

The rule, however, against gambling has no

such limitation, the language being, "gambling in any form by a member of the force in a station or elsewhere;" and rule 45 amplifies that as follows: "Gambling in any form by a member of the force, in a station or elsewhere, is strictly forbidden, and they shall not participate in public gift contests or schemes."

The manual also provides that the trial board shall adopt rules for its government as it may deem just and expedient, but the court is informed that no such rules have been adopted by the trial board, except as they may have grown up from practice, or precedents which may have become established in the trial of cases.

General rule 28 provides that "although the members of the force are relieved at certain hours from the actual performance of duty, they are held to be on duty and shall be amenable to these rules at all times, and must be prepared to act immediately when their services are required."

The members of the force are protected in their tenure of office, in addition to the protection given by the statute aforesaid, by general rule 80, which provides that "any person appointed upon the police force shall hold his office during such time as he shall faithfully observe and execute the rules and regulations of the Board of Commissioners pertaining to the police department, and the laws and ordinances applicable to and in force in the District of Columbia."

It seems to me, from a consideration of these statutes and rules, that a charge of gambling, if sustained by sufficient evidence, would justify the trial board in dismissing an officer, whether the gambling was shown to have taken place while he was on or off duty; so that I am, therefore, constrained to hold that the objection made by the petitioner, that he was off duty at the time the alleged offense took place, is immaterial.

I must also hold that, under the rules, a charge of gambling, if established by proof, would be a sufficient cause for the removal of an officer, whether he should be indicted for the offense and tried and convicted in a court of law or not. There might be a different conclusion, were it not for the fact that the rules make it an offense, independent of its being an offense against the general laws of the land.

I have carefully read the testimony taken before the trial board, some of which seems to be competent, and much of which is hearsay and incompetent.

If I was sitting as an appellate court to pass on questions of law, as to the admissibility of testimony, I think I should have to hold that it was error to admit much of the testimony that was given in this case, on the ground of its being hearsay. I doubt the power of the court, however, to weigh the testimony in a proceeding before the trial board where there is any competent evidence for the consideration of that tribunal; and if that is the only ground on which the petitioner bases his application to this court for its interference in the premises, I must hold it unfounded.

The statements made by the petitioner himself to other members of the force were competent, and if believed by the trial board, seem to me



sufficient to warrant the finding that the petitioner had been engaged in gambling.

It is true that both the officers who were charged with being engaged in the game of crap emphatically deny the same, but the petitioner does not deny that he told Officer Hall that he had played a game of crap with Officer Hoffman, and had won seventy-two (\$72) or seventy-three (\$73) dollars from him, but says he can not tell for sure whether he did or not, but that if he did, it was only in the manner of a joke.

Officer Hall testifies positively that the petitioner told him that a game had taken place between himself and Officer Hoffman, and also that he told him how much money changed hands, seventy-three (\$73) dollars, and that he was the winner. So there can be no doubt from this testimony, and that of the other officers, if the testimony is to be believed, that the second charge against the petitioner is established, namely, that the petitioner talked with members of the police force about having played a game of chance.

If such statement is false, it might still be the proper foundation for charges against the said officer, because of its tendency to destroy the good discipline of the force; and even if untrue in fact, that it would be conduct unbecoming an officer within the meaning of the rules.

There being some evidence of the truth of both charges, and the court being of the opinion that the weight and effect of such evidence is for the trial board in the first instance, and for the Commissioners on appeal, and that the court, in a proceeding of this character, by certiorari, has no authority to reweigh the testimony, I am forced to conclude that the petition should be denied, and the papers remanded to the respondents, who have not yet taken any action, for such action in the case as they may in their best judgment determine is right and proper. The Commissioners, being clothed with appellate jurisdiction, have the right, and it is their duty, to carefully pass upon and consider the weight of the evidence; and the court assumes that they will do so, and that they will not do an injustice to an officer who is alleged to have given good service, by hasty or ill-advised action; and that they will not give credence to hearsay testimony, notwithstanding it may be found in the record. They may disapprove the findings of the trial board; and, if not, they may modify or ameliorate the severity of the sentence.

Where a complaint is definite and uncertain because the pleader has confused the elements of ordinary negligence with gross negligence, and the attention of the trial court is called thereto, it is held, in *Rideout v. Winnebago Traction Co. (Wis.)*, 69 L. R. A., 601, that the court should compel the plaintiff to proceed upon one theory or the other, or to give such permissible construction to the pleadings as to confine plaintiff's claim to one species of wrongdoing. The other cases on right to recover for ordinary negligence under allegation of gross, wilful, or wanton negligence, or vice versa, are collated in a note to this case.

## Court of Appeals of the District of Columbia

SAMUEL GASSENHEIMER, APPELLANT,

v.

UNITED STATES.

INDICTMENT; RECEIVING EMBEZZLED PROPERTY; VENUE; TRANSFER OF CAUSE FOR TRIAL; EVIDENCE; GUILTY KNOWLEDGE; CORRUPTION OF JUROR; EVIDENCE OF DETECTIVES; INSTRUCTIONS.

1. Under an indictment charging the defendant with receiving embezzled goods, knowing the same to have been embezzled, it is necessary to prove, first, that the goods were embezzled in this District, and, second, that the defendant had received them with knowledge of that fact.
2. An indictment alleging that a railway conductor, having collected tickets in the line of his duty, refrained from punching, delivering, and reporting them to the railroad company, and thereafter converted them to his own use in this District, held to charge the conductor with embezzlement, under sec. 834, Code D. C., by the wrongful conversion to his own use, within this District, of property which had come into his possession by virtue of his employment, and not with embezzlement by way of secretion with intent to convert, which latter act also constitutes embezzlement as defined in said section of the Code.
3. The words "convert to his own use" have a well-known legal signification; and it is not necessary, in an indictment charging embezzlement, to allege the particular means by which the conversion was effected.
4. Common Law Rule 53, of the Supreme Court of this District, and which by rule 111 is made to apply to criminal cases so far as applicable, providing that where a verdict has been set aside by the justice presiding at the trial, or the jury have failed to agree and been discharged, the said justice may, of his own motion or at the request of either party, transfer said cause to another justice for trial, is not mandatory in its terms, but the matter rests in the discretion of the trial justice; and his denial of an application for such transfer can not be assigned as error.
5. On the trial of an indictment for receiving embezzled property with knowledge that it was embezzled, proof of guilty knowledge by the defendant at the time of his receipt of the property of which he is accused can not be supplied or aided by proof of the receipt or possession of other like property not shown to have been embezzled, and the admission of such evidence constitutes reversible error.
6. Evidence of the receipt by the accused of other property shown to have been embezzled held admissible, whether such property be described in the indictment or not, as bearing upon the question whether defendant, at the time of receiving the property of which he is accused, had knowledge that the same was embezzled; and it is not necessary that such other embezzled property shall be shown to have been received by the defendant from the person from whom he obtained that for the receipt of which he is accused.
7. Evidence that on a former trial of the case the defendant had endeavored to procure the corruption of a juror, is admissible as tending to show consciousness of guilt on his part, but circumstances calculated merely to raise a strong presumption that defendant contemplated tampering with the jury and furnished money for the purpose, held insufficient proof of the fact to justify the admission of such evidence.
8. Even though the admission of such evidence be not error, the court not being able to anticipate its insufficiency, when such insufficiency becomes apparent a motion to strike out the evidence should prevail, and its refusal is error.
9. When one or more of the facts essential to conviction depends upon the evidence of detectives specially employed to procure it, it is proper for the court to call attention in some way to the possible bias or prejudice of such witnesses, as compared with those who are apparently disinterested, but the form such instruction shall take is largely a matter of discretion with the trial justice. Held, not error to refuse the instruction requested by defendant, and to give instead the charge quoted in the opinion.
10. The charge of the trial court relating to evidence impeaching one of the witnesses for the prosecution held erroneous.
11. A charge of the trial court, that if the jury found



that defendant received the property under such circumstances as would satisfy any man of ordinary intelligence and caution that they had been embezzled, they would be "justified in assuming that he knew" that fact, held not error, though the use of the word authorized instead of justified would have been better.

No. 1544. Decided January 4, 1906.

**APPEAL** by defendant from a judgment of the Supreme Court of the District of Columbia, holding the Criminal Court (Criminal, No. 23,253), entered upon a verdict finding him guilty of receiving embezzled property. Reversed.

*Mr. Henry E. Davis* and *Mr. F. J. Hogan* for the appellant.

*Mr. J. S. Easby-Smith* for the United States.

**Mr. Chief Justice SHEPARD** delivered the opinion of the Court:

The appellant was indicted and found guilty of the crime of receiving embezzled goods, knowing them to have been embezzled.

The substantial facts alleged in an elaborate indictment are:

That prior to and at the time of the commission of the offense hereinafter charged the Baltimore and Ohio Railroad Company, a body corporate, operated certain lines for the transportation of passengers for hire in Maryland and the District of Columbia, one of which extended from Washington to Baltimore; that stations and offices are maintained on said line at Laurel, Hyattsville, and other places for the issue and sale of tickets to passengers, which entitle them to transportation between the places named therein; that the company employed agents called conductors, whose duties were to collect said tickets, punch them in a manner indicating that they had been used, and upon the arrival of the trains at their destination to turn over the same to the said company at one of its offices, with a report of such collection and the trips upon which the same had been made; that from January 24 to February 22, 1904, one James H. Barnes was employed as such a conductor on trains running between Baltimore and Washington, going and returning. It is then recited that certain tickets, containing two parts or coupons, one good for going from place of sale to destination, and one for return from place of destination to place of sale, were sold by the officers of said company to purchasers. Sixteen of such tickets are minutely described by dates and numbers on the same and attached coupons, as having been sold and issued to passengers. Some of these were sold at Laurel for passage to Baltimore and return, and some from Laurel to Washington and return; some were sold at Washington for passage to Baltimore and for return, and some at Baltimore for passage to Washington and return therefrom. That these tickets and coupons were used by the purchasers upon the train of which said Barnes was the conductor, who collected the same. That they thereupon became the property of said railroad company. That the said Barnes, "disregarding his duty in the premises, purposely refrained from punching a hole in the same as aforesaid, and from turning them over as aforesaid, and from making a report of their collection as aforesaid; and that after so collecting the same

and on the twenty-second day of February in the year aforesaid, and at the District aforesaid, did wrongfully convert the same to his own use and thereby embezzled the same." That the defendant, Samuel Gassenheimer, "well knowing all and singular the premises aforesaid, did thereafter and on the twenty-second day of February in the year aforesaid, and at the District aforesaid, unlawfully receive from the said James H. Barnes, whether by way of purchase or by way of gift, the grand jurors aforesaid are not informed, the said return coupons distinguished by the numbers aforesaid, and the said tickets," numbered as in the indictment 23,531 and 23,532, "with intent to defraud the said body corporate of the same." There follows a statement of the value of each.

The defendant moved to quash the indictment upon several grounds, which need not be stated, as they were restated elaborately in a motion in arrest of judgment hereafter mentioned. This was overruled, and the defendant was put upon trial, found guilty, and sentenced to confinement in the penitentiary for the term of two years.

1. The first and thirty-seventh paragraphs of the assignment of errors are founded on the action of the court in denying the motions to quash and in arrest of judgment.

The grounds of the motion in arrest were: 1. The indictment does not allege that the tickets therein described, or that any one of them, was embezzled in any manner described in the sections 833, 834, and 835 of the Code. 2. It does not allege that the said tickets, or any one of them, came into the possession or under the care of the said Barnes by virtue of his employment in the District of Columbia. 3. That the indictment does not properly allege that the said tickets were of any value at the time of the alleged embezzlement. 4. The indictment is in other respects vague and uncertain, and does not charge any offense against the defendant. 5. The indictment does not charge an embezzlement in the District of Columbia by the said Barnes. 6. It does not charge the coming into possession of the said Barnes of the said property in the District of Columbia. 7. It does not charge that said Barnes received the property mentioned in the District of Columbia. 8. It does not charge a lawful possession or custody by the said Barnes in the District of Columbia of the property mentioned in the indictment.

(1) The objection as regards the allegation of the value of the embezzled property is obviously without merit, and has not been insisted upon in the appellant's brief.

(2) The other objections, save one, may be considered together as presenting the one material question: Whether the indictment charges the commission of the act of embezzlement by Barnes, as defined in the Code, in the District of Columbia.

Section 834 of the Code provides that: "If any agent, attorney, clerk, or servant of a private person or copartnership, or any officer, attorney, agent, clerk, or servant of any association or incorporated company, shall wrongfully convert to his own use, or fraudulently take, make way with, or secrete, with intent to convert to his own use, anything of value which shall come

into his possession, or under his care by virtue of his employment or office, whether the thing so converted be the property of his master or employer or that of any other person, copartnership, association, or corporation, he shall be deemed guilty of embezzlement, and shall be punished by a fine not exceeding one thousand dollars, or by imprisonment for not more than ten years, or both."

To convict the defendant it was necessary to prove, first, that the property had been embezzled by Barnes in the District of Columbia, as defined in the foregoing section; and, second, that the defendant had bought or in any way received it from Barnes, "knowing the same to have been embezzled, taken, or secreted," as provided in section 836. Section 834, as stated in appellant's brief, "plainly describes two classes of acts either one of which constitutes embezzlement: The first being the wrongful conversion to his own use by the accused of property which has come into his possession by virtue of his employment, and the second being the fraudulent taking, making way with, or secreting with intent to convert such property to his own use."

Upon this construction of the section, which was adopted also by the court in the charge to the jury, it is contended that if the indictment alleges any facts for the purpose of showing the embezzlement, those facts are of embezzlement by way of secretion with intent to convert, and that the acts of secretion are not alleged to have been committed in the District of Columbia. We do not concur in this view.

The allegation that Barnes failed to punch the tickets when collected, and to deliver them to his employer with the required report, as was his duty, does not make out the offense of embezzlement through fraudulent taking, making way with, or secretion with intent to convert to his own use. Those essential words are omitted, and with evident purpose. The act of embezzlement charged is that, having collected the tickets in the line of his duty, and refrained from punching, delivering, and reporting them, wherever such acts and omissions may have occurred, Barnes thereafter converted them to his own use in the District of Columbia. The allegations of collection, omission to punch and return, are proper matters of recital introductory to the substantial charge of conversion. The charge of collection in the line of employment shows that the tickets came lawfully into the possession of Barnes; otherwise his act of conversion would constitute theft instead of embezzlement; and the charge of omission to punch and return merely goes to show that the tickets, when actually converted to the use of the collector, retained the value of their original issue for purposes of transportation, or sale to others for that use.

(3) It is further contended that if the indictment undertakes to charge embezzlement consisting of the wrongful conversion of the tickets after they had come into the possession of Barnes and he had failed to punch and return them, it is insufficient, because "no facts or particulars are stated from which the court may determine whether the acts of Barnes amount in law to a wrongful conversion to his own use or not."

The indictment follows the language of the code, which is sufficiently certain. The words "convert to his own use" have a well-known legal signification, and are of common use in indictments for theft and embezzlement. It is no more necessary in such cases to allege the particular way or means by which the conversion was effected than it is in those cases where there is a general charge of intent to defraud the United States. *United States v. Simmons*, 96 U. S., 360, 364; *Evans v. United States*, 153 U. S., 584, 594. There are two ways, and apparently none other, in which Barnes could have converted the tickets to his own profitable use. One was to obtain transportation for himself, the other was to dispose of them to others for similar use or sale. By the first of these ways the defendant could not be affected, and he could be affected by the second as to such tickets, only, as may have been received by him from Barnes, knowing that they had been embezzled by the latter. The indictment charges the defendant with having received certain tickets from Barnes, which was the final act of his conversion, and nothing more was essential to inform him of the charge that he was called upon to meet. As was said in *United States v. Simmons*, supra, "The defendant is entitled to a formal and substantial statement of the grounds upon which he is questioned, but not to such strictness in averment as might defeat the ends of justice."

There was no error in overruling the motions to quash the indictment and in arrest of judgment.

(4) What has been said here applies to the twelfth, sixteenth, seventeenth, eighteenth, nineteenth, twenty-first, twenty-second, twenty-third, twenty-fourth, twenty-fifth, twenty-sixth, twenty-eighth, twenty-ninth, thirtieth, and thirty-fifth assignments of error, as grouped for consideration under the fifth section of appellant's brief.

These are all founded on prayers refused or charges given by the court, which, as stated on behalf of the appellant, "cover the question of venue, as raised, in all its phases."

The substantial point involved in all of the instructions refused or given was whether the act of embezzlement, charged against Barnes, consisted of his collection and secretion of the tickets with intent to defraud, or of his wrongful conversion of the same to his own use in the District of Columbia. The court was right in holding that the inquiry of the jury was limited to the ascertainment of the fact of the alleged conversion in the District of Columbia, the evidence of which consisted of his disposition of the tickets therein. See *Com. v. Parker*, 165 Mass., 525, 536, 539, and *Davis v. U. S.*, 18 App. D. C., 468, 494: 29 Wash. Law Rep., 574.

Whether Barnes, through his collection of the tickets and failure to deliver and make report of them, might have been indicted for embezzlement, as having fraudulently secreted the same with the intent to convert them to his own use, is not a question involved in the present case. He was not charged therewith, but with their subsequent, actual, wrongful conversion to his own use under the other clause of the section creating the offense of embezzlement.

In this view of the case it is unnecessary to determine whether section 836 embraces the receipt of property that may have been embezzled in another jurisdiction, as embezzlement is defined in our Code, or is limited to that which may have been embezzled in the District of Columbia.

2. The second assignment of error is founded on the denial of a motion made by the defendant to transfer the cause for trial before another justice of the Supreme Court of the District.

It appears that the defendant was first put upon trial on this indictment November 24, 1904. The jury, failing to agree, were discharged on December 1. On December 9 defendant moved to transfer the cause, under common law rule 53 of the Supreme Court of the District, which reads: "In any case where a verdict has been rendered by a jury and has been set aside by the justice presiding at the trial, or the jury have failed to agree and have been discharged, and said cause shall again stand for retrial before said justice, the said justice may of his own motion, or at the request of either party, pass an order transferring said cause for retrial to another justice engaged in the trial of civil causes by jury, provided that any application for such transfer by either party shall be made with due diligence and not for the purpose of delay." Rule 111 makes the foregoing rule "apply to and govern the practice in the criminal courts so far as applicable."

The motion was overruled, and defendant applied to this court to grant him a special appeal therefrom. This application was denied because it was not deemed expedient to delay a trial that had begun, in order to determine a question that could be raised on appeal from a final judgment in the event of conviction. In *re Gassenheimer*, 24 App. D. C., 312; 32 Wash. Law Rep., 808.

Rule 53 has not been repealed or substituted by section 87 of the Code, save to the extent that a criminal case can only now be certified for trial by one criminal court to the other.

Now that the rule is regularly before us for construction, we are of the opinion that it is not mandatory in its terms. A rule promulgated by a court for the orderly, speedy, or convenient disposition of cases, though binding to its full extent until regularly repealed or superseded, is not like a statute prescribing a rule to answer the general demands of justice or conferring an individual right, where the word may must be read as shall in order to effect its purpose. Rule 53 had no such purpose. Ordained by the justices of the Supreme Court, sitting in general term, to meet ordinary conditions that might often exist, it must be presumed to have been written with circumspection. Bearing this in mind, and considering the apparent object in view, we think that the use of may instead of shall indicates the intention to leave the matter of its operation to the discretion of the presiding justice in a case wherein it may be invoked.

Entertaining this view, it is immaterial to consider whether the motion should not have been renewed after the second mistrial to entitle the appellant to raise the question on the third and final trial. It was not error to refuse it at any time.

3. The third, fourth, fifth, and thirty-first assignments are founded on exceptions taken to the admission of evidence tending to show the possession by the defendant of other tickets than those shown to have been collected and embezzled by Barnes, and to the charge of the court in respect thereof.

The pertinent facts recited in the bill of exceptions are these:

Evidence had been given tending to show that four of the sixteen tickets, recited in the indictment, had been collected by Barnes, who failed to punch and return them, and had been received and resold by the defendant. Other evidence tended to show statements made by the defendant, who was the proprietor of a hotel adjacent to a theatre, that he had often bought tickets from theatrical people at his hotel, and that he would buy tickets from any one that offered them. Further evidence tended to show that Barnes had been seen to enter defendant's hotel on February 22, 1904, go upstairs, remain there a few moments, and then go away, but without having any conversation with the defendant. Evidence tended to show, also, that on the same day defendant had sold Baltimore and Ohio Railroad tickets, issued at several of the stations mentioned in the indictment, to a witness, who was a detective in the employ of the said railway company, and that defendant had told the witness, "you want to be careful who you give them to; it might get us into trouble."

It further tended to show that after arrest defendant told the witness that they were trying to find him, and that he would better "lay low," etc. Evidence had also been introduced tending to show that the same witness had asked defendant for tickets between other points than those mentioned in the indictment, and that defendant had said that "he did not get any other tickets, and that the party he gets those tickets from only runs between Baltimore and Washington." In addition to this evidence, the Government, as tending to show knowledge by the defendant, at the time of the receipt of the four tickets before mentioned, that they had been embezzled by Barnes, offered in evidence forty-seven uncanceled tickets, accompanied by evidence tending to show that they had all been purchased from the defendant between January 6 and February 22, 1904. Some of these are described in the indictment, but the remainder were not. In connection with these, evidence was introduced tending to show that some of them had been collected by Barnes and not returned to the company. There was no evidence tending to show that the majority of them had, in fact, been collected and embezzled by Barnes. The defendant objected to the admission of each and every one of these tickets that had not been described in the indictment, and specially also to those which had not been shown to have been collected and embezzled by Barnes. The objections were overruled, with exceptions reserved. Exceptions were also taken to the charge of the court referring to the tickets as evidence in the case.

The appellant concedes the existence of an exception to the general rule prohibiting evidence of other offenses in a case where, under an indictment charging the receipt of stolen or

embezzled property, evidence of the receipt of other stolen or embezzled property of the same kind at or near the same time, knowing the same to have been stolen or embezzled, is offered as a circumstance tending to show guilty knowledge of the theft or embezzlement of the property, with the receipt of which the accused stands charged. He contends, however, that in order to render such evidence admissible under this exception there must be accompanying evidence tending to show, first, that the other property had been stolen or embezzled; second, that it had been received by the defendant with knowledge of that fact; and, third, that it must have been received from the same person.

(1) The first of these propositions is a sound one. Proof of guilty knowledge at the time of the receipt of the property of which one is accused can not be supplied or aided by proof of the receipt or possession of other like property not shown to have been embezzled also. *Gassenheimer v. State*, 52 Ala., 313, 318; *State v. Saunders*, 68 Iowa, 370; *State v. Prins*, 113 Iowa, 72, 76; *Harwell v. State*, 22 Tex. Ct. App., 251, 253.

It had been shown that the defendant was engaged in buying and selling unused or unclaimed railway tickets, and he might, therefore, have lawfully come into the possession of such tickets of the same railway company through delivery by their original purchasers. When proved that he had received four of such tickets that had been embezzled by Barnes, the possession of other tickets, which had not been shown to have been embezzled, would necessarily have a tendency to induce the suspicion that he was regularly engaged in the business of handling embezzled tickets. While, therefore, the fact that he had been in the possession of many other tickets, not shown to have been embezzled, might have a tendency to prejudice the jury against him, it would have no legitimate, legal effect to prove that he had knowledge of the character of the four tickets charged in the indictment, which the evidence tended to show he had received from Barnes after their embezzlement by the latter. The generally recognized exception to the rule which forbids evidence of other transactions than the one charged in the indictment can not be extended so far as to permit such a probable result. We are compelled to hold that the admission of evidence of the possession of such of the tickets as had not been shown to have been embezzled was error.

(2) The second ground of the exception was not well taken. As regards all the tickets otherwise shown to have been embezzled, whether described in the indictment or not, all of the facts and circumstances in the evidence warranted the submission to the jury for determination the question whether the defendant knew their unlawful character at the time that he received them.

(3) The third ground of the exception is of no practical importance in the case as now presented, because, in so far as relates to the tickets shown to have been embezzled, the evidence tends to show their embezzlement by and receipt from the same person—Conductor Barnes. It may, however, arise upon another trial. There is some conflict of authority upon the

question, whether, under this exception, the proof relating to other embezzled goods shall be confined to such as shall have been received from the same embezzler; but, in our opinion, those which deny this limitation are more in accord with the reason on which the admissibility of other transactions than those charged in the indictment has been established.

We perceive no error in the charge of the court as applied to such of these tickets as may have been admissible under the rule above enounced.

4. Seven assignments of error are founded on exceptions taken to the admission of certain evidence offered for the purpose of showing that on the first trial of the defendant upon this indictment, he had endeavored to procure the corruption of a member of the jury; and to instructions refused as well as given relating thereto.

Evidence of such an act has frequently been admitted as tending to show consciousness of guilt, and being, therefore, in the nature of an admission. It would serve no useful purpose to consume time with setting forth this evidence which, in our opinion, falls short of proof of the act charged. Certain circumstances shown therein were calculated to raise a strong suspicion that the defendant contemplated tampering with the jury, and furnished money for that purpose, but they went no further than this. It may also be added that the failure of the prosecuting officer to realize the expectations which he had of making the necessary proof was chiefly, if not entirely, due to the fact that the witness necessarily relied on failed to make good statements which he had previously made in private. Evidence clearly insufficient to establish the independent fact which alone justifies its admission often has, as has been said before, a very injurious effect upon the defendant, who is entitled to an unprejudiced consideration of the pertinent evidence introduced to establish his guilt of the particular crime charged in the indictment. Grant that it was not error to admit the evidence over the objection of the defendant, because the court could not anticipate its insufficiency to establish the necessary fact, yet defendant's motion to strike it out upon its conclusion ought clearly to have prevailed. This conclusion renders it unnecessary to consider such errors as are founded on the instructions relating to this evidence.

5. The twentieth assignment of error is founded on the refusal of the court to give the following instruction at the request of the defendant:

"10. The jury is instructed that if it find from the evidence that the witnesses, Peyser, Bradbury, Patterson, and Rutledge, are professional detectives, and in that capacity were employed to do the work respecting which they have testified, the jury should receive the testimony of the said witnesses with a large degree of caution and in considering the question of the defendant's guilt or innocence, should give weight accordingly to the testimony of the said witnesses and each of them."

In the course of the general charge, the court used the following language:

"Something has been said concerning detective evidence, or evidence given by detectives.

The fact that a witness is or is not a paid detective, does not at all settle the question whether he does or does not tell the truth; and although there may be in this case four, I believe—whatever the number is independent—paid detectives, yet you are not justified under the law from that fact alone in discarding their testimony. That is a fact which you are entitled to and should take into consideration in determining whether or not they are telling the truth. If you should find, after comparing their testimony with established facts and with the testimony of other witnesses in the case and who are not detectives that the detectives are telling the truth, you should give their testimony the weight that it should properly have. If you are conscientiously of the opinion that they are not telling the truth, then you should give to their testimony as little weight as is proper. And so with respect to the testimony of all witnesses; because, in dealing with any and all witnesses, your duty is to ascertain how much or how little of the truth any witness has related to you from the stand, and give due weight to the result after your consideration of the same, whether the witness be a detective or not."

Where one or more of the facts essential to conviction depends upon the evidence of detectives specially employed to procure evidence of the crime, it is eminently proper for the court to call the attention in some way to the possible bias or prejudice of such witnesses, as compared with those who are apparently impartial and disinterested. What form such instruction shall take must depend to a large extent upon the facts and circumstances of the particular case, and be largely a matter of discretion with the presiding justice. The jury are the judges of the credibility of the witnesses, and the defendant has no absolute right to an instruction such as was asked in the case. There was no abuse of discretion in refusing the instruction prayed, and giving instead the charge quoted above. *Lorenz v. U. S.*, 24 App. D. C., 337, 338; 32 Wash. Law Rep., 822.

6. It is unnecessary to search the record, as would be required under the twenty-seventh assignment of error, to ascertain whether there was sufficient evidence, direct or circumstantial, that Barnes was the conductor and agent of the railway company when he collected or became possessed of the tickets. To constitute embezzlement it was necessary to show that the tickets came into his possession by virtue of his agency. If such was the fact, then it can be proved upon another trial with such certainty as to avoid future contention.

7. The thirty-third assignment of error is on exceptions taken to the charge of the court relating to evidence impeaching one of the witnesses for the Government. Having defined what is meant by reputation in the community for want of truthfulness, the court charged as follows: "If you find that the witnesses who came and spoke against him in that regard were speaking only out of motives of personal hostility and were giving their individual opinions of Peyser as contrasted with his general name as it existed in the community, then that testimony ought not to influence you."

It was suggested, on the argument, that the

cross-examination of the impeaching witnesses developed that they were actuated by personal hostility, and had in fact given their individual opinions rather than those entertained in the community generally. We find no such evidence in the record, and as the charge was excepted to properly, we must hold that it was erroneous.

8. The last assignments of error that require consideration are the fourteenth and thirty-second, which relate to the same subject.

At the request of the district attorney, the court gave the following special instruction to the jury:

"3. In determining whether or not the defendant knew that the tickets received by him from Barnes had been embezzled, you are to consider all the facts in the case and the circumstances surrounding the transaction. It is not necessary for the Government to prove that he had such knowledge derived either from his actual personal observation, or from information given by others, who knew the fact of embezzlement. The guilty knowledge of the defendant upon this subject may be inferred from the facts, if at the time of receiving the tickets, he knew the facts which in your judgment would impress any ordinary reasonable man with the belief that the tickets had been embezzled. If, therefore, you find that the defendant received the tickets under such circumstances as would satisfy any man of ordinary observation, intelligence, and caution that they had been embezzled, you will be authorized in finding that he knew that fact, and in returning a verdict of guilty, if the other elements of guilt are established."

In that part of the general charge which was also excepted to the court explained the principle of law embodied in the foregoing special instruction, as applied to all of the circumstances in evidence from which guilty knowledge might be inferred, and was careful to inform the jury that they must be satisfied beyond a reasonable doubt before they could find that it existed. The charge concluded its recital with the statement that if the circumstances were found to be proved the jury would be "justified in assuming that the defendant knew." The word "justified" might possibly have been misapprehended by the jury, and it would have been better to use the word authorized, as in the special instruction aforesaid, or to say that they might infer therefrom that the defendant had the required knowledge.

Both instructions express a familiar principle of law relating to notice or knowledge, and an instruction identical with the said special instruction has been approved in similar cases by two courts of high authority. *Collins v. State*, 33 Ala., 434, 436; *Com. v. Finn*, 108 Mass., 466, 469.

In criminal cases, necessarily, the inference from established circumstances must be so certain and conclusive as to satisfy the minds of the jury beyond any reasonable doubt of the existence of the fact to be established; but this, as we have seen, the jury had been substantially charged. The cases relied on by the appellant in support of his contention of error in these instructions (*Hickory v. U. S.*, 160 U. S. 408, and others following it)

are not in point. In Hickory's case, the flight of the defendant was proved as a circumstance tending to show guilt, and error was assigned on exceptions taken to the charge of the court commenting thereon. The charge, which was lengthy and bore with extreme harshness upon the defendant, was held to be erroneous, notwithstanding certain qualifying words that were subsequently used. Its substantial effect was thus stated in the opinion of Mr. Justice White: "Indeed, taking the instruction that flight created a legal presumption of guilt, with the qualifying words subsequently used, they were both equivalent to saying to the jury that they were, in considering the facts, to give them the weight, which, as matter of law, the court declared they were entitled to have; that is, as creating a legal presumption so well settled as to amount virtually to a conclusive proof of guilt."

The charge under consideration is not subject to that objection, and we find no reversible error in it. On another trial, the possibility of the jury being misled in that respect should be carefully avoided.

For the errors that we have pointed out, the judgment will be reversed and the cause remanded, with direction to set aside the verdict and grant a new trial.

Reversed.

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### Legal Notices.

#### FIRST INSERTION.

Millan & Smith, Attorneys

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Mary L. Crampsey, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 7th day of February, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of February, 1906. WILLIAM W. MILLAN, Columbian Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,400. Administration. [Seal.] 6-31

### Legal Notices.

W. H. Wahly, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of William F. Nolte, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 7th day of February, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of February, 1906. MINNIE M. NOLTE, 1355 U St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,449. Administration. [Seal.] 6-31

Wolf & Rosenberg, Attorneys

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of George Bush, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of February, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of February, 1906. LOUIS BUSH, 1305 Est. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,467. Administration. [Seal.] 6-31

John M. George, Solicitor

In the Supreme Court of the District of Columbia,  
Holding an Equity Court.

George C. Reiser, Lunatic, by James E. Scott, His Committee, Complainant, v. The Unknown Heirs, Allenees, and devisees of Gullian Ludlow, Center Swet, Vander Swet, and James Doyle et al.

In Equity. No. 25,918. Docket No. 57.

The object of this suit is to establish the title of the complainant against the defendants by adverse possession to the north thirty-one (31) feet and four (4) inches by the full depth of original lot numbered twenty-four (24) in square four hundred and ninety-nine (499), in the city of Washington, District of Columbia. On motion of the complainant, it is, this 8th day of February, A. D. 1906, ordered that the defendant, John Stafford, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs or devisees or allenees of Gullian Ludlow, Center Swet, Vander Swet, and Patrick Doyle, cause their appearance to be entered herein on or before the first rule day, occurring three weeks after the first publication of this order, good cause therefor having been shown to the satisfaction of the court; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for four successive weeks prior to said return day in The Washington Law Reporter and The Washington Post. By the

[Seal] court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. feb 9-16-23:mar 2

W. Russell Graham, Attorney

In the Supreme Court of the District of Columbia,  
Holding a Probate Court.

In re Estate of James Storey, Deceased.  
Administration. No. 13,362.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for the probate of a paper writing purporting to be the last will and testament of James Storey, deceased, and Eva M. Payne, one of the persons named in said application as an heir at law and next of kin of the decedent, having been returned "not to be found," it is this 9th day of February, 1906, ordered that said Eva M. Payne appear in said court on or before Monday, the 12th day of March, 1906, at 10 o'clock A. M., and show cause why such application should not be granted. Provided a copy of this notice be published once in each week for three successive weeks before the return day above mentioned in The Washington Law Reporter and The Washington

Times, the first publication to be not less than thirty days before said return day. By the Court: WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. 6-31

**Legal Notices.**

**Chas. W. Darr and Richd. A. Curtin, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **James W. Ratchiffe**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **2d day of February, A. D. 1907**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this **2d day of February, 1906**. **JOHN T. CROWLEY**, 920 Pa. ave. N.W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,458. Administration. [Seal.] 6-31

**Thomas Walker, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**In re Estate of Diana Walker, Deceased.**  
**Case No. 12,335.**

Upon consideration of the report of **Thomas Walker**, executor, filed herein, it is, this **2d day of February, A. D. 1906**, adjudged, ordered, and decreed by the court that the sale thereby reported of the following described real estate, situate in the city of Washington, in the District of Columbia, and known as the north part of lot numbered nineteen (19), in **William Richardson's** subdivision of original lots numbered two (2), three (3), four (4), and five (5), in square west of square five hundred and fifty-three (553), as appears duly recorded in the surveyor's office of said District, beginning for the same at the northeast corner of said lot, and thence running south fourteen (14) feet; thence west to the rear line of said lot and to an alley; thence, with said line northwesterly, to the northwest corner of said lot; thence east, with the north line of said lot, to Third street west, the place of beginning, being premises No. 1420 Third street N.W., to **William B. Jackson** for seventeen hundred and fifteen (\$1,715.00) dollars, be ratified and confirmed, unless cause to the contrary be shown on or before the **6th day of March, A. D. 1906**. Provided a copy of this order be published in *The Washington Law Reporter* once a week for three successive weeks before said last-mentioned date. By the Court: **WENDELL P. STAFFORD**, Justice. A true copy. Attest: **James Tanner**, Register of Wills. 6-31

**Belva A. Lockwood, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Henrietta Müller**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **26th day of January, A. D. 1907**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this **5th day of February, 1906**. **BELVA A. LOCKWOOD**, 619 F st. N.W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,439. Administration. [Seal.] 6-31

**Wilson & Barksdale, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**In re Estate of Kate Ross, Deceased.**  
**No. 13,244. Adm. Doc.**

It is by the court this **6th day of February, A. D. 1906**, ordered that the issues heretofore framed relating to the validity of the paper writing dated September 12, 1905, purporting to be the last will and testament of **Kate Ross**, deceased, be and are hereby set down for trial in this court on the **12th day of March, A. D. 1906**, and that this order and the substance of said issues as shown in the margin hereof be published in *The Washington Times* twice a week for four weeks and in *The Washington Law Reporter* once a week for four weeks before said day. **WENDELL P. STAFFORD**, Associate Justice. SUBSTANCE OF ISSUES.

Was the said paper writing duly executed in due form of law as and for the last will and testament of the said **Kate Ross**? Was the said paper writing procured from her by undue influence or by fraud? Was she at the time of the execution of said paper writing [Seal] of sound and disposing mind and capable of making a valid deed or contract? A true copy. Attest: **JAMES TANNER**, Register of Wills. 6-41

**Legal Notices.**

**Charles J. Murphy, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Mary Sullivan**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **7th day of February, A. D. 1907**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this **7th day of February, 1906**. **EDWIN H. PILLSBURY**, 1323 N. Y. ave. N.W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,335. Administration. [Seal.] 6-31

**W. Mosby Williams, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**H. Rozier Dulany et al. v. Catherine B. Ball et al.**  
**Equity, No. 24,984.**

The object of this suit is to establish the title of complainants, **H. Rozier Dulany**, as to lots 8 to 11, and the "Capital Syndicate Company," as to lot 7 in square 1107, Washington City, said District, by adverse possession as against the defendants, heirs of **Henry W. Ball**, to construe the will of **Frances H. Ball** and determine the rights of complainant **Dulany** and certain defendants claiming under said will as to said lots 8 to 11, and if necessary a sale of said four lots and division or provision for a reinvestment of the proceeds thereof and for incidental relief as more fully set out and prayed for in the bill of complaint. On motion of the complainants, by **Mr. W. Mosby Williams**, their solicitor, it is, this **7th day of February, A. D. 1906**, ordered that the defendants, **Henry W. Ball**, **Lavinia B. Yerger**, **William L. Ball**, **Robert W. Stone**, **Eliza C. Stone**, **Elizabeth Bodine**, **Amelia Stevenson**, **Mary Stone Tyson**, **Henry Stone**, and **Mary J. Stone**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in *The Washington Law Reporter* once a week for three successive weeks prior to said return day. **WENDELL P. STAFFORD**, Justice. True copy. Test: **J. R. Young**, Clerk, by **J. W. Latimer**, Asst. Clerk. 6-31

**Edward L. Glas, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Conrad Briel**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **6th day of February, A. D. 1907**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this **6th day of February, 1906**. **MICHAEL A. MESS**, 1301 First st. N.W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,390. Administration. [Seal.] 6-31

**W. Mosby Williams, Solicitor**  
**In the Supreme Court of the District of Columbia**  
**Susan E. Hall et al. v. J. Dominic Bowling et al.**  
**Equity No. 25,951.**

The object of this suit is to have partition by sale of lot 107, in **Gilbert's** subdivision, in square 675, in the city of Washington, said District, the distribution of the proceeds of sale to the parties entitled and incidental relief prayed for in the bill of complaint. On motion of the complainants, by **Mr. W. Mosby Williams**, their solicitor, it is, this **7th day of February, A. D. 1906**, ordered that the defendants, **Kate H. Bowling**, infant, **Grace C. Hill**, **Helen B. Mercer**, **Frances B. Forbes**, **Nannie B. McCabe**, **E. Gill Bowling**, **Lillie B. Bailey**, **Ellen Bowling**, infant, **Marguerite Bowling**, infant, **Henry W. Claggett**, surviving trustee, **Charles H. Stanley**, trustee, and **David S. Briscoe**, trustee, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in *The Washington Law Reporter* once a week for three successive [Seal] weeks prior to said return day. **WENDELL P. STAFFORD**, Justice. True copy. Test: **J. R. Young**, Clerk, by **J. W. Latimer**, Asst. Clerk. 6-31



## Legal Notices

**C. G. McRoberts, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**Charlotte E. Williams, Complainant, v. Mary G. Mew**  
**et al., Defendants.**

**In Equity, No. 25,988. Docket No. 57.**

## ORDER OF PUBLICATION.

The object of this suit is to procure a decree for the sale of a certain piece of real estate with the improvements thereon, being part of lot No. 8 in square No. 817 in the District of Columbia, the proceeds of such sale to be applied to the balance due the complainant herein, in pursuance of the terms of an ante-nuptial agreement by and between the said complainant and her late husband, Samuel T. Williams, deceased. On motion of said complainant, by her solicitor, it is, by the court, this 7th day of February, A. D. 1906, ordered that Anna C. Pollok, Louise Connolly, Charles E. Williams, Ella H. Williams, Emma W. Walde, Clarence P. Walde, Frank F. Williams, Alice W. Williams, Mary L. Williams, John E. Williams, and Dorothea E. Williams, of the defendants hereto, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order. Provided, a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and

[Seal] in The Evening Star, prior to said day.  
**HARRY M. CLABAUGH, Chief Justice.** A  
 true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, 6-3t  
 Asst. Clerk.

## SECOND INSERTION.

**In the Supreme Court of the District of Columbia.**  
**John A. Antrim, Guardian, v. Loris E. Antrim et al.**  
**In Equity, No. 25,247.**

John Riddout, trustee, having reported the sale to Herbert C. Graves of the east fourteen feet eight and two-third inches front, by a depth of ninety-eight feet, of original lot four, square nine hundred and ninety, in the city of Washington, District of Columbia, for twenty-four hundred and fifty dollars, it is this 31st day of January, 1906, ordered that said sale be and it is finally ratified and confirmed, unless cause to the contrary be shown on or before February 28, 1906; provided a copy of this order be published once a week for three successive weeks before said last mentioned date in The Washington Law Reporter. **WENDELL P. STAFFORD, Justice.** True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 5-3t

**E. B. Hay, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of George D. Scott, Deceased.**  
**No. 13,372. Administration.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Alvina R. Scott, it is ordered this 31st day of January, A. D. 1906, that notice be and hereby is given to the heirs at law of deceased, and to all others concerned, to appear in said court on Monday, the 5th day of March, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before

[Seal] said return day. **WENDELL P. STAFFORD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 5-3t

**R. B. Behrend and Nauck & Nauck, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of J. K. Wilhelmina Kirchner, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 31st day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 31st day of January, 1906. **ALBERT O. KIRCHNER, 715 Girard st., FRANKLIN B. KIRCHNER, 35 O st. N. E.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 874. Administration. [Seal.]** 5-3t

## Legal Notices.

**W. C. Martin, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Henry W. Beamer, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 18th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of January, 1906. **WILLIAM C. MARTIN, 508 D st. N. W.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,421. Administration. [Seal.]** 5-3t

**Jos. L. Tepper, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Ignatius S. Spalding, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of February, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of February, 1906. **MARY A. SPALDING, 310 15th st. S. E.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,441. Adm. [Seal.]** 5-3t

**A. Leftwich Sinclair, Attorney**

[Filed January 30, 1906.]

**In the Supreme Court of the District of Columbia,**  
**Holding a Special Term as a District Court of the**  
**United States for the District of Columbia.**

In the matter of the payment of damages resulting to adjacent property from changes in the grade of streets, avenues, and alleys authorized by the act of Congress approved February 28, 1903, relating to the construction of a Union Railroad Station in the District of Columbia. No. 671, District Court Docket No. 2. Notice is hereby given that we, the undersigned, having been designated and appointed by the Supreme Court of the District of Columbia, holding a special term as a United States District Court for the District of Columbia, as a commission to appraise the damages resulting to adjacent property from changes in the grade of streets, avenues, and alleys authorized by the act of Congress approved February 28, 1903, relating to the construction of a Union Railroad Station in the District of Columbia, will meet at 10.30 o'clock A. M. on Monday, the 12th day of March, A. D. 1906, at the United States Court House (City Hall), in the District of Columbia, in a room to be assigned us by the United States marshal for said District, for the purpose of viewing the property affected by the changes in the grade of the following-named streets, avenues, and alleys, and hearing testimony touching the damages resulting to real property from said changes of grade, in accordance with the terms and provisions of the act of Congress approved April 22, 1904, entitled "An act to provide for payment of damages on account of changes due to construction of the Union Station, District of Columbia," to wit: M street northeast, between First and Fourth streets; H street northeast, between Second and Third streets, in front of square numbered seven hundred and fifty-one (751); H street northeast, between Second and Third streets, and Second street northeast, between G and H streets, around square numbered seven hundred and fifty-two (752); alley in square numbered six hundred and twenty-five (625), bounded by Massachusetts avenue, North Capitol, and G streets northwest; Massachusetts avenue northwest, between North Capitol street and New Jersey avenue; F street northwest, between North Capitol and New Jersey avenue. All owners of real property damaged by the changes in the grade of said streets, avenues, or alleys will file a petition with us, in this cause, for an allowance of damages within sixty (60) days after the said 12th day of March, A. D. 1906. The aforesaid act of Congress approved April 22, 1904, provides that upon the failure of any such owner to thus present his claim, within said period, his right to do so shall cease and determine. **CHAS. A. BAKER, GEORGE W. MOSS, GEORGE SPRANSY, Commission to Appraise Damages.** A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 5-6t



**Legal Notices.**

**Charles S. Shreve, Jr., Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**  
**Estate of Mary A. Johnson, otherwise Mary A. Bridges, Deceased.**  
 No. 13,410. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Thomas S. Seagoon, it is ordered, this 30th day of January, A. D. 1906, that notice be and hereby is given to the unknown next of kin, and the unknown heirs at law of the said Mary A. Johnson (otherwise Mary A. Bridges), and to all others concerned, to appear in said court on Tuesday, the 6th day of March, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.  
 [Seal] **WENDELL P. STAFFORD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 5-3t

**Stuart McNamara, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**Mathew O'Callaghan, Complainant, v. Walter O'Callaghan et al., Defendants.** In Equity, No. 25,411.  
 Upon consideration of the report of trustees filed herein, reporting the sale of the property mentioned herein, to wit, 501 Twentieth street northwest, Washington, D. C., to Mathew O'Callaghan, the complainant herein, and it appearing that said sale was had pursuant to instructions embodied in a decree herein, and that the said sale was fair, it is, this 24th day of January, A. D. 1906, ordered that said trustees be, and they hereby are, authorized and directed to accept the offer of said Mathew O'Callaghan, as set forth in said petition, and that said sale to said Mathew O'Callaghan, at and for the sum of four thousand one hundred dollars (\$4,100.00), crediting said O'Callaghan thereon with the sum of five hundred dollars (\$500.00) out of his distributive share as interest as tenant in common in said estate, be, and the same hereby is, ratified and confirmed, unless cause to the contrary be shown on or before the 25th day of February, A. D. 1906. Provided a copy of this order be published in The Washington Law Reporter and Washington Star once a week for three successive weeks before said day. By the court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 5-3t

**W. M. Ellison, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Benjamin F. Kincannon, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 29th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of January, 1906. **MATTIE A. KINCANNON, 806 6th st. N. W.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 13,330. Administration. [Seal.] 5-3t

**E. H. Thomas, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**  
**Estate of John R. Wright, Deceased.**  
 No. 13,368. Administration.  
 Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Edward H. Thomas, it is ordered, this 29th day of January, A. D. 1906, that notice be and hereby is given to Louis Edward Wright, and to all others concerned, to appear in said court on Monday, the 5th day of March, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.  
 [Seal] **WENDELL P. STAFFORD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 5-3t

**Legal Notices.**

**Delmas C. Stutler, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Richard Rothwell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 26th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 26th day of January, 1906. **LILLIE ROTHWELL, 28 9th st. N. E.; WILLIAM WAGNER, 207 and 207½ Pa. ave. S. E.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 13,486. Administration. [Seal.] 5-3t

**Brandenburg & Brandenburg, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of R. Catharine Cain, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 19th day of February, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 25th day of January, 1906. **BERNARD J. CAIN, by F. Walter Brandenburg, Attorney.** Attest: **WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 12,734. Administration. [Seal.] 5-3t

[Filed January 2, 1906. J. R. Young, Clerk.]

**J. H. Smith, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Special Term in Equity.**  
**Madora Hunter, by her Next Friend, Carmencita Williams, Complainant, v. Lawrence N. Hunter et al., Defendants.** Equity No. 25,899.  
 The object of this suit is to have a trustee appointed to hold the title to lot 10, square 234, in the District of Columbia, and collect the rents and profits thereof, for Madora Hunter until she becomes 21 years of age, in place of Cornelius Hardin Hunter, trustee, deceased. On motion of complainant, by her solicitor, J. H. Smith, it is, this 2d day of January, 1906, ordered, that the defendants hereto, Lawrence N. Hunter, Ollie Hunter, Norman L. Hunter, and Margaret Hunter, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise this cause be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and Washington Times prior to said return day. THOS. H. ANDERSON, Associate Justice. A true copy. Test: J. R. Young, Clerk, by T. E. Cunningham, Asst. Clerk. 5-3t

**J. J. Darlington, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding Probate Court.**  
**In the Matter of the Estate of Samuel M. Yeatman, Deceased.**  
 No. 13,413. Admn.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Annie V. Yeatman, it is ordered, this 1st day of February, A. D. 1906, that notice be and hereby is given to Charles R. Yeatman, and to all others concerned, to appear in said court on Monday, the 19th day of March, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.  
 [Seal] **WENDELL P. STAFFORD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 5-3t

**Legal Notices.**

**J. J. Darlington, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding Probate Court.**  
**In the Matter of the Estate of Claus Denekas, Deceased. No. 13,406, Admn. Doc.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased and for letters testamentary on said estate, by Ernest A. Sellhausen and Gustav H. Schulze, it is ordered, that the first day of February, A. D. 1906, that notice be, and hereby is, given to Annie Wortman, Beatrice Ten Wheelborg, Anthony Apfeld, Theodore Apfeld, and Helen Hensel, and to all others concerned, to appear in said court on Monday, the 19th day of March, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **WENDELL P. STAFFORD, Justice.**

[Seal] Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 5-3t

[Filed January 8, 1906. J. R. Young, Clerk.]

**Thos. C. Bradley, Solicitor**

**In the Supreme Court of the District of Columbia.**  
**Lena A. Walker, Complainant, v. Stanley D. Walker,**  
**and Mary Gonzales, Defendants.**  
**Eq. Doc. No. 25,855.**

**ORDER OF PUBLICATION.**

The object of this suit is to procure a decree of divorce, a vinculo matrimonii, from the defendant, Stanley D. Walker. On motion of the complainant, it is this 3d day of January, A. D. 1906, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; provided a copy of this order appear in The Washington Law Reporter and The Washington Post newspapers once a week for three consecutive weeks; otherwise the cause will be proceeded with as in case of default. **THOS. H. ANDERSON, Justice.** A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 5-3t

**John B. Larnier, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Randolph L. Elliot, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of January, 1906. **THE WASHINGTON LOAN AND TRUST CO.,** by Andrew Parker, Treasurer. Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,892. Administration. [Seal.]** 5-3t

**THIRD INSERTION.**

**Edward L. Hillyer, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Harry U. Walton, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Wednesday, the 28th day of February, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 23d day of January, 1906. **UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA,** by Edward L. Hillyer, Attorney. Attest: **WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,746. Administration. [Seal.]** 4-3t

**Legal Notices.**

**Edward L. Gies, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**In Re the Estate of Conrad Briel, Deceased.**  
**Administration, No. 13,380.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by William H. Briel, it is this 23rd day of January, A. D. 1906, ordered that notice be and hereby is given to Engelhard Briel, residing at Marburg, Germany, to appear in said court on Friday, the 2nd day of March, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **WENDELL P. STAFFORD, Justice.** A true copy. Attest: James Tanner, Register of Wills.

[Seal] 4-3t

**John S. Alteman, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Harriet Reamer, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of January, 1906. **WILLIAM F. REAMER, 907 New York Ave., N. W.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,430. Administration. [Seal.]** 4-3t

**Barnard & Johnson, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of Alonso J. Eaton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of January, 1906. **ALONZO B. EATON, 1829 M St. N. W.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,248. Administration. [Seal.]** 4-3t

**Charles W. Darr, Richard A. Curtin, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Mary E. Cook, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of January, 1906. **MATTHEW E. COOK, Henning, D. C.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,247. Administration. [Seal.]** 4-3t

**Jesse H. Wilson, Solicitor**

**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**

**John William Frey et al., Complainants, v. William H. Frey et al., Defendants. Equity No. 22,066.**

**Jesse H. Wilson and Levin S. Frey, trustees, having reported an offer by George S. Knott, Samuel T. Knott, and William J. Knott, to purchase for the sum of thirteen hundred and fifty (1850) dollars, cash, the south half part of lot numbered seven (7) in square numbered one (1) in the city of Washington, District of Columbia, it is this 24th day of January, 1906, ordered that said offer be accepted and that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 28th day of February, 1906, a copy of order to be published in The Washington Law Reporter once a week for three successive weeks before said day. **THOS. H. ANDERSON, Justice.** A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 4-3t**

[Seal] 4-3t

**Legal Notices.**

**Wm. H. Linkins, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**Estate of Matthew Murphy, Deceased.**  
No. 13,398. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Mary H. Murphy, it is ordered, this 25th day of January, A. D. 1906, that notice be and hereby is given to the unknown heirs and next of kin of said Matthew Murphy, deceased, and to all others concerned, to appear in said court on Wednesday, the 7th day of March, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before

[Seal] said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 4-3t

**Chas. T. Hendler, Attorney**  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.

**In Re Estate of Susan Turner, Deceased.**  
No. 12,723. Admn. Doc. 33.

It appearing to the court that the notification as to trial of the issues in this case, relating to the validity of the paper writing dated the 17th day of January, 1901, purporting to be the last will and testament of Susan Turner, deceased, has been returned as to Ella Elroy, Ida German, Sarah Starnell, Annie Gill, Harry Simms, William Simms, Lillie Hall, Sallie Eberhart, Edna Clark (an infant), Mary English, John W. Elliott, Virginia McLane, Lillie Mills, and the unknown heirs at law and next of kin of said Susan Turner, deceased, "not to be found," it is thereupon by the court, this 19th day of January, A. D. 1906, ordered that the issues heretofore framed in this cause be, and they hereby are, set down for trial in this court on the 19th day of February, A. D. 1906, and that the substance of the issues, as shown in the margin of this order, and the date fixed for the trial be published in The Washington Post twice a week for four weeks, and in The Washington Law Reporter once a week for four weeks. WENDELL P. STAFFORD, Associate Justice.

**ISSUES.**

1. Was the paper writing propounded as the last will and testament of Susan Turner, deceased, bearing date the 17th day of January, 1901, executed by her in due form of law? 2. Was the said Susan Turner, at the time of executing the said paper writing, of sound and disposing mind and capable of executing a valid deed or contract? 3. Was the execution of said instrument by the said Susan Turner procured by the fraud of Harry J. McGowan and Jesse A. McGowan, or either of them, or of any other person or persons? 4. Was the execution of said instrument by said Susan Turner procured by the undue influence of said Harry J. McGowan and Jesse A. McGowan, or either of them, or of any other person or persons? A

[Seal] true copy. Attest: JAMES TANNER, Register of Wills. 4-4t

**Francis S. Maguire, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**Estate of Thomas Taylor, Deceased.**  
No. 18,391. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Margaret E. Taylor, it is ordered, this 23d day of January, A. D. 1906, that notice be and hereby is given to Elizabeth Padgett, and to all others concerned, to appear in said court on Monday, the 26th day of February, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty

[Seal] days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 4-3t

**Legal Notices.**

**Walter C. Clephane, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the State of New York and the District of Columbia respectively, have obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Swan M. Burnett, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers on or before the 25th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 25th day of January, 1906. MARGARET BRADY BURNETT, 918 Farragut Square, Wash., D. C. VIVIAN BURNETT, 225 West End ave., New York City. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,437. Administration. [Seal.] 4-3t

**Irving Williamson, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Juno Stewart, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 18th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 18th day of January, 1906. SAMUEL W. CURRIDEN, Office of Center Market; IRVING WILLIAMSON, Columbian Bldg.; LLOYD H. CHANDLER, 2144 Cal. ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,321. Administration. [Seal.] 4-3t

**Wm. M. Lewin, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Rebecca Lycett, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of January, 1906. ETHAN ALLEN LYCETT, 311 N. Charles st., Balto., Md. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,361. Admn. [Seal.] 4-3t

**John J. Brosnan, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Louisa Muse, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of January, 1906. JAMES H. MUSE, 444 1st N.W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,401. Administration. [Seal.] 4-3t

**Frank J. Wissner, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Mary A. Hoover, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of January, 1906. WILLIAM THACKARA FOWELL, 1609 31st st. N.W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,386. Administration. [Seal.] 4-3t

**Legal Notices.**

**John J. Brosnan, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Thomas P. Kelley, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of January, 1906. JOHN J. BROSNAN, 482 La. ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,126. Administration. [Seal.] 4-3t

**Blair and Thom, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**In the Matter of the Estate of Augustine Heard,**  
**Deceased.**

Probate No. 18,364.  
 Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for the probate of the last will and testament of said deceased as a will of real and personal property, and for letters testamentary upon said estate, by Augustine A. Heard, one of the executors named in said will, the other executor named in said will having declined to act and refused said appointment, it is this 24th day of January, 1906, ordered that notice be and the same is hereby given to H. Maxima von Brandt and John Heard, Junior, and all others concerned, to appear in said court on the 26th day of February, 1906, at 10 o'clock A. M., to show cause why said application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each week for three consecutive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. By the Court: WENDELL P. STAFFORD, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills, Clerk of the Probate Court. [Seal.] 4-3t

**Barnard & Johnson, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**  
**Estate of John B. Simmons, Deceased.**  
**No. 18,345. Administration.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Clara B. Simmons, it is ordered, this 25th day of January, A. D. 1906, that notice be and hereby is given to Mary Eliza McLeod, and to all others concerned, to appear in said court on Monday, the 26th day of February, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in the Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. [Seal.] 4-3t

**Carlisle & Johnson, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Elizabeth McLaughlin, also known as Elizabeth A. McLaughlin, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 19th day of February, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 23d day of January, 1906. GEORGIA ANNE O'NEILL, by Carlisle & Johnson, attorneys. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 10,117. Admn. [Seal.] 4-3t

**Legal Notices.**

**Irwin B. Linton, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**Estate of Laura C. Dodge, Deceased.**  
**No. 18,261. Administration.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by William H. Saunders, it is ordered, this 22d day of January, A. D. 1906, that notice be and hereby is given to the unknown heirs of Laura C. Dodge, deceased, and to all others concerned, to appear in said court on Monday, the 26th day of February, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. [Seal.] 4-3t

**FIFTH INSERTION.**

**L. Cabell Williamson, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**L. Cabell Williamson, Mary E. Fitch, Trustees,**  
**Complainants, v. the Unknown Heirs, Alienees, or**  
**Devisers of John Davis, Henry Buford, and John**  
**H. Eaton, Defendants. Equity No. 25,681.**  
 The object of this suit is to perfect complainants' title to lot numbered and lettered "A" in J. B. Hollidge's subdivision of lots, in square numbered five hundred ten (510) in the city of Washington, District of Columbia, as said subdivision is of record in Book C. H. B., page 145, of the records of the office of the surveyor of said District. On motion of the complainants, it is, this 4th day of January, A. D. 1906, ordered that the defendants, the unknown heirs, alienees, or devisers of each of the following named persons, to wit: John Davis, Henry Buford, and John H. Eaton, cause their appearance to be entered herein, on or before the first rule day occurring after three months from the day of the first publication of this order; otherwise the cause will be proceeded with as in cases of default. Provided a copy of this order be published for three months, once a week for three successive weeks for the first month and twice a month for each of the two succeeding months, in The Washington Law Reporter and Washington Post. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. Jan 5-12-19; feb 2-9; mar 2-9

**NINTH INSERTION.**

**Ellwood O. Wagenhorst, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Mary Sherman McCallum, Rebecca Alexander, Com-**  
**plainants, v. Mary A. Ellis, Susan E. Hedlan, the**  
**Unknown Heirs at Law of Susan Decatur, Defend-**  
**ants. Equity, No. 26,785.**  
 The object of this suit is to establish the titles by adverse possession of the complainants to the south 35 feet of original lot 18 of square 198 in the city of Washington, District of Columbia. On motion of the complainants, by their solicitor, it is, by the court, this 7th day of November, A. D. 1905, ordered that the defendant, Susan E. Hedlan, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays occurring after the day of the first publication of this order; otherwise the cause, as to her, will be proceeded with as in case of default. And, it is, by the court, further ordered, this 7th day of November, A. D. 1905, that the unknown heirs at law of Susan Decatur, and each of them, cause their appearance to be entered herein on or before the first rule day occurring three months next after the date of the first publication of this order; otherwise the cause, as to them, will be proceeded with as in case of default. This order, before the appearance days named for the defendant, Susan E. Hedlan, and for the unknown heirs at law of Susan Decatur, respectively, shall be published once a week for four successive weeks, and twice a month for three successive months, in The Washington Law Reporter and The Washington Evening Star. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. nov. 10, 17, 24; dec. 1, 15; Jan. 5, 12; feb. 2, 9

Justice blanks of every description for sale at this office.

# The Washington Law Reporter

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WASHINGTON, D. C. - - - FEBRUARY 16, 1906

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### Disbarment of John H. Adriaans.

The Supreme Court of this District, sitting in general term, on Wednesday, February 14, 1906, entered an order of disbarment against John H. Adriaans, a member of the bar, and directed that his name be stricken from the roll of attorneys and counsellors of the court. The proceedings originated in charges preferred against the respondent by the grievance committee of the Bar Association, in which several specifications of unprofessional and fraudulent conduct were made. The opinion of the court was delivered by Mr. Chief Justice Olabaugh, and stated that only the first specification, which charged the respondent with a fraud upon an illiterate negro named Fry, whereby a deed had been procured by the respondent on the alleged representation that the paper was only a power of attorney, had been adjudged against him. This charge, however, the court held, had been clearly made out, not only by the record and testimony in the suit brought to set aside the deed, which had been considered by the court, but also by the respondent's admissions in that suit and in his response to the charges. It was shown that the transaction occurred more than twelve years ago, but the opinion declared that the statute of limitations should not apply; and reference is made to the fact that, although the fullest opportunity had been given the respondent in the matter of testimony in his own behalf, no evidence appeared tending to show any amendment in his conduct. Disbarment proceedings,

said the court, are not criminal in their nature, and are not for the punishment of the respondent, but rather for the preservation of the purity and integrity of the bar.

Mr. Justice Wright dissented from the conclusion of the majority, and in doing so expressed his regret at not being able to arrive at the conclusion reached by them. The right to continue in the practice of his profession, he said, is one of which an attorney can not be deprived without due process of law, which requires not only the presentation of a specific charge, but the trial and proof of it according to the rules of the common law. He expressed the opinion that the charge of fraud, which it was claimed was sustained by the Fry case, was not an issue in that case, for the reason that there was no fact to sustain such a charge averred in the bill of complaint.

On behalf of the respondent, an appeal was noted to the Court of Appeals by Mr. J. S. Easby-Smith, who was retained by the respondent as counsel after the hearing upon the charges had been had.

MR. SAMUEL R. CHURCH, for a number of years prior one of the justices of the peace for this District, retiring from that position on December 31, 1905, has removed to Lynchburg, Virginia, where he will engage in the practice of his profession. Mr. Church is a lawyer of fine ability, and enjoys a large measure of the esteem of the bar of this District. His service as justice of the peace was eminently satisfactory, and his retirement from that office was much regretted. He has many friends in this city who, while regretting that his active connection with the bar of this District has been severed, wish for him abundant success in his new field.

### Cumulative Sentences in the Police Court.

In the cases of Harris v. Lang and Harris v. Nixon et al., decided during the present week by the Court of Appeals, the power of the Police Court to impose successive sentences for different offenses, although in the aggregate more than one year, is sustained. The appellee Lang was convicted in the Police Court upon two separate informations, charging distinct offenses, and sentenced to one term of 364 days' imprisonment, and to another of 180 days, to begin at the expiration of the former sentence. Contending that the latter sentence was null and void because, being cumulative, the term imposed exceeded the limit of the jurisdiction of the Police Court, he applied for and obtained his discharge upon habeas corpus. The Court of Appeals reverses the judgment of the court

below, holding that both sentences were lawfully imposed by the Police Court and should have been served. It is held that the sentences were not cumulative merely because two imprisonments are made successive in point of time, if it happens that the prisoner convicted upon two separate informations receives two separate definite sentences for two separate offenses. The same conclusion is reached in the case of *Harris v. Nixon*, the opinions in both cases being delivered by Mr. Justice McComas.

**Warranty of Machine—Personal Injuries—Consequential Damages.**

In *Birdsinger v. McCormick Harvesting Machine Co.*, decided February 6, 1906, by the Court of Appeals of New York, and reported in the *New York Law Journal*, it is held that a contract of sale of a harvesting machine, reciting that the machine was warranted "to do good work, to be well made, of good materials, and to be durable if used with proper care," does not cover damages for a personal injury to an operator caused by the breaking down of the machine. Such a warranty covers only the capacity of the machine, by reason of its good construction, to do good work and indemnity to the buyer against failure in that respect. The right to recover consequential damages, as the result of a breach of warranty, depends upon the terms of the warranty, considered in connection with the article sold.

**Operators of Elevators Not Common Carriers.**

The Supreme Court of Rhode Island, in *Edwards v. Manufacturing Building Company* (June, 1905, 61 Atl., 646), followed the decision of the New York Court of Appeals in *Griffin v. Manice* (166 N. Y., 197), and disregarded what is probably the weight of authority when it held that a landlord who maintains an elevator in his private building for the use of tenants and their employees and customers is not a common carrier, nor bound to the same degree of care as that imposed upon a common carrier, but is bound only to exercise reasonable care for the safety of those who enter upon his premises and use the elevator.

AN ORDER was passed by the Supreme Court of the District, in general term, on Wednesday, February 14, 1906, disbaring James M. A. Watson from practice and striking his name from the roll of attorneys of the court. Watson is now serving a term in the penitentiary at Moundsville, W. Va., and a copy of the charges against him was served upon him there, to which he made an unsatisfactory response.

**Court of Appeals of the District of Columbia.**

**TAYLOR KNOLL, APPELLANT,**

**v.**

**UNITED STATES.**

**POLICY LOTTERY; SUFFICIENCY OF INDICTMENT.**

1. An indictment for a violation of sec. 863, Code D. C., charging that defendant, on divers days between given dates, in this District, unlawfully was concerned as an agent in managing a certain policy lottery, a more particular description whereof is to the grand jurors unknown, is not bad in failing to allege that the said policy lottery was situated in this District.
2. A person who, as owner, agent, clerk, or in any other manner, is concerned in managing a policy lottery in this District, is clearly within the operation of said section 863, Code D. C.
3. An indictment for a violation of said section, which follows the language of the statute and informs the defendant with substantial certainty of the time, place, and character of the offense with which he is charged, held sufficient.
4. It is not necessary in such an indictment to set out the ordinary constituents or features of the game or device called policy lottery in the statute, those words having a common, well understood meaning.

No. 1580. Decided January 4, 1906.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, holding the Criminal Court, Criminal No. 24,610, entered upon an indictment for violation of sec. 863, Code D. C. Affirmed.

*Mr. John W. Patterson* for the appellant.

*Mr. D. W. Baker* for the United States.

Mr. Chief Justice SHEPARD delivered the opinion of the court:

1. The appellant, Taylor Knoll, was found guilty under an indictment charging him with being concerned as an agent in managing a policy lottery, and sentenced to confinement in the penitentiary for two years.

The indictment is in two counts, but the jury found him not guilty as charged in the second of these.

The single question raised on the appeal is the sufficiency of count one, which charges, that on divers "days between January 2 and 17, 1905, in the District of Columbia, the said Taylor Knoll," unlawfully was concerned as an agent in managing a certain policy lottery, a more particular description whereof is unknown to the grand jurors aforesaid; against the form of the statute," etc.

Article 863 of the Code, under which the indictment was presented, reads as follows:

"If any person shall within the District keep, set up, or promote, or be concerned as owner, agent or clerk or in any other manner, in managing any policy lottery or policy shop, or shall sell or transfer any ticket, certificate, bill, token, or other device purporting or intended to guarantee or assure to any person, or to entitle him to a chance of drawing or obtaining a prize, to be drawn in any lottery, or in the game or device commonly known as policy lottery or policy, or shall, for himself, or another person, sell or transfer, or have in his possession for the purpose of sale or transfer, or shall aid in selling, exchanging, negotiating, or transferring a chance or ticket in or share of a ticket in any policy lottery, or any such bill, certificate,

token, or other device, he shall be fined not more than five hundred dollars, or be imprisoned not more than three years or both."

2. The first ground of objection to this indictment is, that it does not allege that the policy lottery, in managing which the appellant was concerned as agent, was situated in the District. This is conceded, but it does not follow that the indictment is bad on account of the omission.

Section 863 is very comprehensive in its language, and was evidently devised for the prevention of the policy lottery mischief in all of its ordinary forms in the District of Columbia. In the execution of this intention it creates several distinct offenses that may be committed in the maintenance, promotion, prosecution, and exploitation of such schemes, and it makes no difference whether the scheme may have been originally organized, set up, or situated in some other jurisdiction, provided the prohibited acts charged in the indictment shall have been committed in the District. If one be charged, as appellant is, with being concerned as agent, in managing any policy lottery or policy shop in the District, the offense consists of the act charged, and it is immaterial where the principal office or shop may be located. If a person only keeps, sets up, or promotes a lottery beyond the limits of the District he is not indictable therein; but if, as owner, agent, clerk, or in any other manner, he be concerned in managing the same in the District, he comes clearly within the operation of the statute. This construction has the support of the following well-considered cases arising under similar statutes: *Com. v. Sullivan*, 146 Mass., 142, 144; *Com. v. Horton*, 2 Gray, 69; *Com. v. Hooper*, 5 Pick., 42, 43; *State v. Foley*, 6 N. H., 53.

3. The second and last objection to the indictment is that it violates the fundamental rules of criminal pleading in respect of certainty.

We do not concur in this contention. Brief as the charge is, it follows the language of the statute, and informed defendant with substantial certainty of the time, place, and character of the offense which he was called upon to defend. This is all that the settled rules of pleading in similar cases require. *State v. Wilkerson*, 170 Mo., 184, 191; *Traut v. State*, 111 Ind., 499, 503; *Bueno v. State*, 40 Fla., 160, 167; *Com. v. Sullivan*, 146 Mass., 142, 144; *State v. Foley*, 6 N. H., 53. Having charged directly that defendant was engaged as agent in managing a policy lottery in the District, at a certain time, it was not necessary to set out the various acts or conduct which might be proved in order to show agency and management. Such strictness in averment was not necessary to the reasonable, rightful protection of the defendant, and might, by confining the evidence thereto, have operated to defeat the ends of justice. *U. S. v. Simmons*, 96 U. S., 360, 364; *Gassenheimer v. U. S.*, present term.

For even stronger reasons, it was not necessary to set out the ordinary constituents or features of the game or device called policy lottery in the statute. Policy lottery, or policy as it is sometimes called, has a common, well understood meaning. That the framers of the Code so understood it is apparent, for the section prohibiting it describes it as the "game or

device commonly known as policy lottery or policy."

Moreover, the indictment following the language of the statute adds the words: "A more particular description whereof is unknown to the grand jurors aforesaid."

While the game or device is well known to be a method of gambling by betting as to what numbers will be drawn in a lottery of one form or another, the operation, in respect of tickets, numbers, betting, drawing, distribution, and management, if required to be particularly described in an indictment, might be changed from time to time so as to baffle the ingenuity of the pleader, but without changing the real character of the unlawful scheme.

The court did not err in overruling the motion in arrest of judgment, and the judgment must therefore be affirmed. It is so ordered. Affirmed.

WILSON McD. LINDSEY, APPELLANT,

v.

THE PENNSYLVANIA RAILROAD COMPANY AND THE PHILADELPHIA, BALTIMORE AND WASHINGTON RAILROAD COMPANY.

CARRIERS; POSTAL CLERKS AS PASSENGERS; NEGLIGENCE; FAILURE TO HEAT CARS.

1. A railway company, in the carriage of route agents or postal clerks of the United States, charged with duties respecting the protection and proper distribution of the mails carried under contracts and in accordance with law, is under the same obligation to them, as regards suitable and safe carriage, that it is to ordinary passengers.
2. The duty of properly fitting up, furnishing, warming, and lighting postal cars for the accommodation of route agents who accompany and distribute the mails, is expressly imposed upon the carrier by sections 4002 and 4006, R. S.
3. For a breach of this duty, expressly imposed for the benefit of the route agents, whereby an injury is sustained, a right of action accrues.
4. In an action by a postal clerk for injuries sustained by reason of the failure of the defendant company to heat the mail car in which he was compelled to ride in the discharge of his duties, the trial court directed a verdict for defendant, on the ground that the injury complained of was the result of a breach of the contract with the United States for the carriage of mails and route agents, and plaintiff could have no right of action therefor. *Held*, that the trial court erred in so holding.

No. 1573. Decided January 4, 1906.

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 46,861, entered upon a verdict directed by the court in an action for personal injuries. Reversed.

*Mr. Burton T. Doyle* and *Mr. J. Altheus Johnson* for the appellant.

*Mr. Frederick D. McKenney* and *Mr. J. S. Flannery* for the appellees.

*Mr. Chief Justice SHEPARD* delivered the opinion of the Court:

This action was brought by *Wilson McD. Lindsey*, in the Supreme Court of the District, against the *Pennsylvania Railroad Company* and the *Philadelphia, Baltimore and Washington Railroad Company* jointly.

The substantial allegations of the declaration are: That defendants, as common carriers,



jointly operate lines of railway between the city of Washington and Jersey City; that, being post-roads under and by virtue of the laws of the United States and the regulations of the Post-Office Department thereof, the defendants were employed to transport the mails of the United States, and the route agents or postal clerks accompanying the same, and in so doing undertook to provide the necessary postal cars, and to keep the same warmed, as required by law; that on each of the following dates—November 20, November 28, and December 11, 1903—plaintiff was a route agent or postal clerk of the United States, and was compelled to accompany certain of their mails then being carried by defendants in postal cars between the places aforesaid; that on the said occasions the defendants neglected their duty in respect of warming and keeping warmed said postal cars in which plaintiff was compelled to ride in the performance of his duties, and carried the same in excessively cold weather without any heat whatsoever; that by reason of his having been compelled to ride in said unheated cars in the performance of his duty, plaintiff contracted a severe cold, which resulted in pneumonia, causing him bodily and mental suffering and expense, and greatly impairing his natural health and strength, etc., to his great damage, etc.

Plaintiff offered evidence tending to prove the several material allegations of his declaration, but before its conclusion the court announced that further evidence would prove a useless consumption of time, as, in his view of the law, the action was not maintainable. This view was, that as the injury complained of was the result of a breach of the contract with the United States for the carriage of mails and route agents, the plaintiff could have no right of action therefor.

The bill of exceptions records a brief statement of a colloquy between the court and counsel on this point, in which counsel contended that the action was not for the breach of the contract, but in tort for the breach of a duty imposed by law in part for the benefit of plaintiff and other route agents. The court denied this contention, and reaffirmed his intention to take the case from the jury on that ground alone. He admitted that, under the plaintiff's view of the law, his damages had been sufficiently proved. Plaintiff, however, offered to introduce further evidence in support of his allegations. For the reason before given, the court declined to permit this. On motion of the defendants, then formally made, the court directed the jury to return a verdict for them. Plaintiff reserved exceptions covering all the rulings made, and has appealed from the judgment entered on the verdict.

We are of the opinion that the court erred in taking the case from the jury. It is settled law that in the carriage of the route agents or postal clerks of the United States, charged with duties respecting the protection and proper distribution of the mails carried under contracts in accordance with law, the carrier is under the same obligation to them, as regards suitable and safe carriage, that it is to its ordinary passengers. *Gleason v. Va. Midland Railroad Co.*, 140 U. S., 435; *C. & O. Ry. Co. v. Patton*, 23 App. D. C., 113, 121: 32 Wash. Law Rep., 85; *Weaver*

*v. B. & O. Ry. Co.*, 3 App. D. C., 436, 451: 22 Wash. Law Rep., 393.

Had plaintiff sustained injuries through the derailment of the cars, or a collision, as a consequence of defendants' negligence, there could be no possible doubt, under those decisions, of his right to recover. We perceive no substantial difference between such a case and this.

The statutes of the United States, and not the contract, merely, under which the mails are carried, expressly provide that the postal cars shall be properly fitted up, furnished, warmed, and lighted for the accommodation of the route agents who accompany and distribute the mails. R. S., sections 4002, 4005.

Whether the failure to provide the required accommodations may also constitute a breach of a contract made with the United States is immaterial. The provisions of the statutes were expressly intended for the benefit of mail agents and clerks compelled to accompany the mails during their transportation, and would seem to form a material inducement to their entry into contracts with the United States for such services. For a breach of this duty imposed for their benefit, whereby an injury is sustained, a right of action accrues. As in the case of injury to an ordinary passenger, the right of action is not confined to the breach of a contract for carriage, but lies for the wrong done in the negligent performance of the duty imposed upon the carrier. *C. & O. Ry. Co. v. Patton*, 23 App. D. C., 113, 121: 32 Wash. Law Rep., 85. That was an action for injuries sustained by a route agent or clerk in a collision resulting from negligence, and the declaration recited a contract between the United States and the defendant for the carriage of the mails and clerks in charge thereof. A judgment for the plaintiff was sustained. Mr. Justice Morris, who delivered the opinion of the court, said: "Argument, in our opinion, would be utterly useless to show that the declaration in this case is one in tort, and not upon contract. The matter is too plain for argument. There is, it is true, a contract stated as existing between the United States and the appellant, whereby the appellee was entitled to be transported with the mail in the mail car of the appellant's train; but this is only stated to show that the appellee was lawfully on the appellant's train, and entitled to be transported safely by the appellant. The charge of the declaration is that the appellee was injured by the appellant's negligence in contravention of the duty which the appellant owed the appellee in consequence of the contract aforesaid. This is plainly the statement of an action on tort, and not of an action on contract. The statement of the contract is only by way of inducement.

"The substantial question in the case, if at this day it can be called substantial, or could ever at any time have been reasonably so considered, is whether the appellant owed any duty to the appellee, such as it owed to the ordinary passenger whom it contracts to transport for hire; and what the degree of that duty is, if it does owe any. The question has long since been decided adversely to the contention of the appellant by the Supreme Court of the United States, and by numerous other tribunals, as well as by this court."

The declaration in this case does not go so far in its allegations of a contract, but merely makes a general statement of facts showing that the plaintiff was carried on the defendants' cars, under conditions raising up the duty imposed by the statute, and then alleges specific breaches of that duty and the receipt of injuries directly resulting therefrom.

The common law, without reenforcement of statute, makes it the duty of common carriers to provide suitable cars for the transportation of ordinary contract passengers, and confers a right of action upon one of these who can show that he has suffered injury through negligent failure to heat the cars properly in cold weather.

As the plaintiff in this case has the ordinary right of a passenger, though not carried in a regular passenger car, it might be that he, too, would have a right of action, without the aid of a statute, for injuries resulting directly from the negligent failure to heat the car provided for his transportation along with the mails in his charge. However this might be, the duty of heating the car is imposed by the express command of the statute, independently of any special contract between the carriers and the United States that may also have contained a stipulation to the same effect.

If an ordinary passenger, which is undoubtedly true, has a right of action under a statute imposing duties looking to the comfort and safety of the general traveling public, for injury sustained by reason of failure of performance, there ought to be a similar right in one of a special class of passengers under a statute devised for their comfort and safety in the necessary conditions of their transportation.

The court erred in taking the case from the jury, and for that reason the judgment must be reversed, with costs, and the cause remanded for another trial. It is so ordered. Reversed.

Failure of the employees operating a car and engine by which a trespasser on the railway track is struck and injured without fault of the employees, to take charge of the wounded man and give him care and attention, is held, in *Union P. R. Co. v. Cappier* (Kans.), 69 L. R. A., 513, not to be a violation of a legal duty for which the company is liable. An elaborate note to this case reviews all the other authorities on care due to sick, infirm, disabled, and otherwise helpless persons with whom no contract relation is sustained.

The duty to sound warnings when trains approach a trestle over a highway is held, in *Louisville & N. R. Co. v. Sawyer* (Tenn.), 69 L. R. A., 662, to depend upon the dangerous character of the place, which is a question for the determination of the jury.

The right of the United States, under the Federal Constitution, to exact the license tax prescribed by the internal revenue laws for dealers in intoxicating liquors, from the dispensing and selling agents of a State which, in the exercise of its sovereign power, has taken charge of the business of selling such liquors, is sustained in *South Carolina v. United States*, *Advance Sheets*, U. S., 1905, 110.

## Court of Appeals of the District of Columbia.

THE UNITED STATES EX REL. MARGARITO ROMERO ET AL., APPELLANTS,

v.

GEORGE B. CORTELYOU, POSTMASTER-GENERAL.

POSTOFFICES; COUNTY SEATS; DISCONTINUANCE; RE-ESTABLISHMENT; MANDAMUS.

1. Under the proviso to the act of Congress of June 9, 1896 (29 Stat., 313), the Postmaster-General is without power to discontinue a postoffice at a county seat for the purpose of consolidation with another, regardless of any view he may entertain in respect of the public interests affected.
2. Where, in disregard of said proviso, the Postmaster-General discontinues a postoffice at a county seat for the purpose of consolidating it with another, mandamus will lie to compel him to reestablish it.
3. Private citizens residing at said county seat and interested in the maintenance of said postoffice, may maintain proceedings by mandamus to compel the performance of his duty in respect of its reestablishment.

No. 1559. Decided December 5, 1905.

APPEAL by petitioners from an order of the Supreme Court of the District of Columbia, at law, No. 47,075, dismissing a petition for a writ of mandamus. Reversed.

*Mr. S. A. Putman* and *Mr. W. H. Robeson* for the appellants.

*Mr. D. W. Baker* for the appellee.

*Mr. Chief Justice SHEPARD* delivered the opinion of the Court:

This is an appeal from a judgment dismissing a petition for mandamus filed against Henry C. Payne, as Postmaster-General of the United States, by the mayor of, and by certain citizens residing in, the town of Las Vegas, New Mexico.

It appears from the allegations of the petition, that Las Vegas is an incorporated town, is now, and had been for a long time prior to March 31, 1903, the county seat of San Miguel County, New Mexico; that, on and before March 31, 1903, there had been regularly established and maintained therein a United States postoffice; and that on said date the defendant had discontinued said postoffice, against the will of the inhabitants of said town, and, though requested, refuses to reestablish the same.

The answer of the Postmaster-General substantially admits the foregoing facts, and justifies his action on the following grounds: He says that the town of Las Vegas and the city of East Las Vegas are adjoining communities, but separated by a river; that, prior to March 31, 1903, there was a postoffice in each place; that said city was larger and more populous than the town, and was entitled, under the law, to the free delivery of mail matter, while the town was not; that there had been great confusion in delivery of mails, through mistake in sending mails intended for the city to the town; that in the exercise of his official discretion, and looking to the efficiency of the service, he had discontinued the postoffice in said town, changed the name of the postoffice in East Las Vegas to Las Vegas, and extended the free delivery thereof to the town and the territory formerly served

by the office therein; that for these reasons he has refused to reestablish the said postoffice, and that his action is not subject to review.

Upon the death of Henry C. Payne, his successor, Robert J. Wynne, was made a party, and upon his relinquishment of the office, the present Postmaster-General, George B. Cortelyou, was made defendant.

1. Whether the municipal officers of the town of Los Vegas can maintain this action on behalf of the town or its inhabitants, we need not stop to inquire. Certain of the plaintiffs are private citizens who reside in the said town and are interested in the maintenance of the postoffice therein for their own and the general convenience. If it be the plain duty of the respondent to reestablish the office, then, we think it clear, upon principle and authority, that they can maintain the action for the enforcement of that duty. High Ex. Leg. Rem., sec. 431; U. P. R. R. Co. v. Hall, 91 U. S., 343, 355.

2. It is unnecessary to recite the various statutes defining the powers of, and conferring general discretion upon, the Postmaster-General in respect of the establishment, maintenance, and discontinuance of postoffices. It is sufficient to say that they confer general powers and broad discretion, which, if not expressly limited or taken away, as regards the locality in question, would amply justify the action complained of. The town of Las Vegas, being a county seat at the time of the discontinuance of the postoffice, the question for determination is whether he was not expressly prohibited by the act of Congress passed June 9, 1896, from discontinuing the postoffice therein, and, if so, whether it is not made his plain duty to re-establish it?

The provision of the said act reads as follows: "Provided, that no postoffice established at any county seat shall be abolished or discontinued by reason of any consolidation of postoffices made by the Postmaster-General under existing law, and any such postoffice at a county seat heretofore consolidated shall be established as a separate postoffice at such county seat. Provided, however, that this provision shall not apply to the city of Cambridge, Mass., or to Towson, Md. . . . 29 Stat., 313.

The intention of Congress, plainly expressed in this provision, was to take from the Postmaster-General the power to discontinue a postoffice at a county seat for the purpose of consolidation with another, regardless of any view that he might entertain in respect of the public interests affected. The town of Las Vegas being a county seat at the time his action was taken, the discontinuance of the postoffice therein was in direct opposition to the law, and it is his duty to reestablish it.

3. Notwithstanding this view of the plain duty of the Postmaster-General under the law, it is contended, on his behalf, that the writ of mandamus does not lie to undo an act which has already been completed. This is doubtless true where there is another effective remedy at law, or in equity to undo, or to repair the effects of the wrongful action. Without reviewing the decisions cited in support of the contention, we think that they go no farther than above indicated. Some of them involved a review of judicial action; others present a case where a recan-

vass of votes in a corporate election was demanded, where the result had been declared and the officers who were not before the court had been installed in accordance therewith; in still another, it was sought to compel the abatement of a nuisance committed by public officers in the repair of a highway. The facts of the case at bar distinguish it from those cases. The Postmaster-General is provided with the means to reestablish the postoffice at the county seat, and it is made his plain duty to do so. This duty is a continuing one, and there is no other judicial remedy for its enforcement. Any injury that may have resulted from the discontinuance of the postoffice can not be compensated in this action, but he may be compelled to bring it to an end by reestablishment, which is all that is asked.

The case is analogous to that where a railway company, required by law to maintain a station or to stop its trains at a designated place, and having obeyed the law for a time, has discontinued the practice. In such case, the power to compel resumption seems well established. *People v. L. & N. R. R. Co.*, 120 Ill., 48; *U. P. R. R. Co. v. Hall*, 91 U. S., 343, 353; *I. C. R. R. Co. v. Illinois*, 163 U. S., 142, 153.

For the reasons given, the judgment will be reversed, with costs, and the cause remanded, with direction to render a judgment granting the prayer of the petition. Reversed.

Insurance companies doing business in Iowa are held, in *Carroll v. Greenwich Ins. Co.* Advance Sheets, U. S., 1905, 66, not to be deprived of their rights under U. S. Const., 14th Amend., by Iowa Code 1897, § 1764, making it unlawful for them, or their officers, agents, or employees to make or enter into any combination or agreement relating to the rates to be charged, the amount of commission to be allowed agents, or the manner of transacting their business within the State, in the absence of any judicial construction of such statute as having any other than the single object to insure competition.

Municipal ordinances requiring all garbage and other refuse matter to be delivered at a specified crematory or reduction plant, there to be cremated or destroyed at the expense of the person, company, or corporation conveying the same, are held, in *California Reduction Co. v. Sanitary Reduction Works*, Advance Sheets, U. S., 1905, 100, not to be invalid as taking private property for public use without compensation, even if some of the substances so destroyed may have some elements of value.

An ordinance conferring on a city contractor the exclusive right to collect and dispose of garbage is held, in *Gardner v. Michigan*, Advance Sheets, U. S., 1905, 106, not to be invalid so far as it relates to the refuse from the tables of hotels, as depriving the owner of his property without compensation, although such refuse may be valuable as food for swine, or for the manufacture of merchantable grease, or other products.

## Supreme Court of the District of Columbia.

KATE WILLARD BOYD ET AL.,  
EXECUTORS,

v.

LUCY PARKER WILLARD ET AL.

## DONATIO CAUSA MORTIS; INTENT OF DONOR; DELIVERY.

1. Where the clear and manifest intention of the donor can be carried out without an invasion of the well recognized essentials of a legal gift causa mortis, it is the duty of the court to give effect to such intention.
2. W, having in his possession a basket of valuable securities, with a tag attached thereto bearing the words "this is the property of Caleb C. Willard," a few days prior to his death directed his confidential secretary to remove and destroy said tag, and to replace it with another, on which were the words "this is the property of Mrs. Caleb C. Willard and Kate Willard Boyd, to be divided equally." The basket, with this tag attached, was then returned to the place from which it had been taken, next to his wife's trunk, in the room jointly occupied by them, and remained there until after his death. The intention of the donor to make the gift was clear, and the facts and circumstances in evidence tended to show that he intended to deliver, and believed he had delivered, the securities to the donees. *Held*, that the gift was complete, and the donees entitled to the securities.
3. A gift is presumed to have been accepted by the donee even though he had no actual knowledge of it, if the same be beneficial to him.
4. When a donee resides with the donor, the change of possession required to support the gift is, necessarily, only a relative one, to be determined from the circumstances of each particular case.

No. 25,818. Decided February, 1906.

HEARING on a bill in equity for an injunction, etc. Bill dismissed.

*Mr. John B. Larnier* for the complainants.

*Mr. R. Ross Perry & Son* for the defendants.

Mr. Justice ANDERSON delivered the opinion of the Court:

The complainants bring this suit as executors of the estate of Caleb C. Willard, deceased, against the defendants, concerning certain stocks and bonds which they claim as assets of Willard's estate. The defendants, Lucy Parker Willard and Kate Willard Boyd, are of full age and are sued in their own right as beneficiaries under the last will and testament of Caleb C. Willard, deceased, and as claimants of the property, and the defendants, Alice Willard Boyd and Walter Willard Boyd, are also sued in their own right as such beneficiaries, and are infants under the age of twenty-one years.

Briefly stated, the facts presented by the bill are as follows:

On August 2, 1905, Caleb C. Willard, a well-known resident of this city, died at the St. Charles Hotel, Atlantic City, N. J. He left a last will and testament, which was duly admitted to probate and record, a copy of which, dated July 12, 1905, is filed as an exhibit to the bill. He left to survive him, in addition to his wife, Lucy Parker Willard, a married daughter, Kate Willard Boyd, and her two children, Alice Willard Boyd, aged 17 years, and Walter Willard Boyd, aged 7 years. He also left real estate to the value of about \$2,000,000, and the stocks and bonds here in dispute, of the value of some \$375,000.

Apparently prompted by his declining health, Mr. Willard and his confidential clerk Mr. Camaller, some time in January 1905, gathered up all of his securities of every kind then in his office in the Adams building in this city, and, placing them in a basket, carried them to his private residence, No. 1315 P street N. W., whereupon the contents of the basket were listed and a tag placed thereon by Mr. Willard's direction bearing the inscription "This is the property of Caleb C. Willard."

Thereafter, to wit, May 17, 1905, being in increasingly failing health, and hoping to be benefited by the change, Mr. Willard, accompanied by his wife, his family physician Dr. Boyd, his confidential clerk Mr. Camaller, and two nurses, went to Atlantic City, where he took up his residence at the St. Charles Hotel. Thereupon, and upon the same day of their arrival in Atlantic City, Camaller suggested to Mr. Willard that it was unsafe to allow this basket of securities, many of which were negotiable, to remain unprotected at his Washington residence, and Mr. Willard then directed that upon his return to Washington a few days later, he should deliver the basket and contents to his legal adviser, Mr. John B. Larnier, with the request that he keep the same in his safe, which was accordingly done.

Thereafter, on July 12, 1905, at the written request of Mr. Willard, Mr. Larnier delivered said basket to Camaller, who on the same day delivered it to Mr. Willard at his hotel in Atlantic City, and Mr. Willard, without opening it, placed it near his bed in his room, where it remained until the day of his death.

On the 30th day of July, 1905, Mr. Willard requested Camaller to remove the tag theretofore placed on the basket bearing the inscription "This is the property of Caleb C. Willard," and to replace it with a new strong linen tag bearing the inscription "This is the property of Mrs. Caleb C. Willard and Kate Willard Boyd, to be divided equally." Thereupon, Camaller procured the designated tag, and, having written the inscription thereon as directed, he exhibited the same to Willard, who, after expressing himself satisfied with it, directed Camaller to attach the same to the basket, which he did, and at the same time destroyed the old tag at the instance of Mr. Willard. The basket, after having been thus retagged with this new inscription of ownership, was returned to its former place in Mr. Willard's room.

On the following Wednesday, August 2, 1905, Mr. Willard died, and thereupon one of the nurses in attendance placed said basket, without any knowledge of its contents, in Mrs. Willard's trunk, which was taken in the usual way to Washington, and delivered at Mr. Willard's residence on the evening of August 3d; and, on opening the trunk on the same day, Mr. Camaller, knowing the contents of the basket, took possession of the same and retained it until after the funeral on the evening of August 5th, when, at a meeting of the executors held at the residence of the deceased, Camaller produced the basket, which was intact and bore the tag last placed thereon by him. Upon opening the basket on that occasion, the complainants, who are the executors of Mr. Willard's estate, found stocks and bonds aggregating the

value of about \$375,000; and it was also found that these securities corresponded to the list which the executors discovered among the effects of Mr. Willard—a copy of which list is attached to the bill as a part thereof. As soon as defendants, Lucy Parker Willard and Kate Willard Boyd, learned that the tag on this basket bore the inscription of their joint ownership, they demanded that the contents of the basket, to wit, these stocks and bonds, be delivered to them as their property, and protested against the executors claiming the same as assets of Mr. Willard. The complainants refused to comply with the request, contending that the gift, if such it was intended to be by Mr. Willard, was not a complete *donatio causa mortis*, and that without instructions or directions from a court of competent jurisdiction, they had no right to recognize the claim of the defendants.

Thereupon, the basket and the securities were deposited in the vaults of the National Safe Deposit Savings & Trust Company and placed in a box rented in the name of the O. O. Willard estate, where they now are, and where it was agreed that they should remain until the rights of all parties pertaining thereto were adjudicated.

The prayer of the bill is that the alleged gift of the securities described may be decreed to be invalid, and the defendants, Lucy Parker Willard and Kate Willard Boyd, may be perpetually enjoined from setting up any claim or interfering with the complainants in taking full possession of said securities, and for such other and further relief as the nature of the case may require and to the court may seem fit and proper.

The testimony taken in this case substantially supports the averments of the bill in all of its details. It is rare indeed that a case is submitted to a court in which the testimony is so singularly free from conflict in the statements of witnesses. Relieved, therefore, as the court is, from all necessity of reconciling the testimony so as to clearly and correctly ascertain the facts and circumstances under which the securities in question were placed in this basket and surrounding the final placing of the substituted tag thereon with its endorsement, "This is the property of Mrs. Caleb C. Willard and Kate Willard Boyd, to be divided equally," there is left for the determination of the court but one single general proposition, namely, did Caleb C. Willard intend to make a gift *donatio causa mortis* of these securities to the persons named on that tag, and to be equally divided between them, and, if so, was it an executed gift *donatio causa mortis*?

That Mr. Willard intended to execute this gift, and that he believed at the time he caused the last tag to be put thereon, to wit, on July 30, 1905, that he had said and done all that was necessary for the complete and legal execution of the gift, and so continued to believe down to the day of his death, can not seriously be questioned. So clear is this to my mind, in the light of the uncontradicted testimony, that I deem it wholly unnecessary to recite any portion of it in support of that conclusion, except to note in passing that, after Mr. Willard had caused the substituted tag to be put upon the basket,

he told his wife, Mrs. Willard, in reply to a question put by her, viz: "Mr. Willard, do you realize that in the will you have made you have given Kate nothing *absolutely*?" "Yes, I have; Kate will have plenty"—thus showing beyond all possible controversy that his mind was at perfect rest upon that subject, and that he then firmly believed that he had left her one-half of the stocks and bonds in this basket, and had evidenced her title thereto by a few simple words written upon the tag attached to the basket as expressing the gift in its complete legal finality.

In a case like this, where the intention of the donor is so clear and satisfactory, and where he has done everything that he deemed necessary to perfect the gift, and that, too, after having taken the advice of his legal adviser, Mr. Larner, and also of his nephew, Mr. Howe, a lawyer of Boston, as to how he should proceed in executing such gift, it would seem to be the duty of the court, if it may be done without violating any rule of law, to recognize the validity of such gift. In other words, so long as the clear and manifest intention of the donor can be carried out, without an invasion of the well-recognized essentials of a legal gift, *donatio causa mortis*, it is the obvious duty of the court to give effect to such intention. The only difficulty that is in anywise presented by the facts in this case is as to the question of delivery. That Mr. Willard intended to deliver, and believed that he had delivered, such stocks and bonds, cannot be questioned. Did he deliver them in contemplation of law? If so, the gift is complete; otherwise it fails.

It is to be noted that the last acts of ownership over these stocks and bonds exercised by Mr. Willard prior to his death occurred on July 30, three days before his death. His mind was made up the night before that he would carry into effect what he had determined to do as early as the spring of 1905, when he talked over the matter of this gift with Mr. Larner; again when Mr. Larner wrote his will on the 15th of June, 1905, and again when he wrote his nephew at Boston and received his reply about the middle of July confirming the method of effectuating his gift of these securities theretofore suggested by Mr. Larner. I have said that, on Saturday night, the 29th of July, he determined that on the next day he would carry out his intention to dispose of these securities in his lifetime in the manner suggested by Mr. Larner and also pointed out by Mr. Howe in the letter referred to. Therefore it was that he said to his wife on that Saturday night that the next day he had some important business with his confidential secretary, and did not want to be disturbed. When the next day arrived he and his secretary were entirely alone in his room at the St. Charles Hotel, and his secretary called his attention to the fact that there were some coupons on certain of these bonds falling due on the 1st of August; and thereupon he directed him to clip them off and to deposit them to his (Willard's) account in his bank at Washington, which Camaller did, the coupons amounting to \$250. All that was left Mr. Willard intended to pass with the gift that he determined to make that day, and this act was his last exercise of

ownership over the contents of this basket, other than to part with his title thereto, which he then and there did by substituting for the tag already thereon, on which was indorsed the words, "This is the property of Caleb O. Willard," a new, strong linen tag, bearing the words, "This is the property of Mrs. Caleb O. Willard and Kate Willard Boyd, to be divided equally," and then, after looking for the last time at the indorsement, and satisfying himself that what he directed to be written thereon had been faithfully recorded, he directed that the basket be returned to the place from which it had been taken, viz, next to his wife's trunk and within two or three feet of the head of his bed. Neither by word or act from that moment to the hour of his dissolution did he make reference to what had occurred that day, except to say to his wife, as already stated, that she was mistaken in supposing that he had left nothing *absolutely* to his daughter Kate (Mrs. Boyd).

It is to be noted that Mr. Willard, in declaring, by this substituted tag, the ownership of these securities, did not say, "This is the property of Mrs. Caleb O. Willard and Kate Willard Boyd, to be divided equally, *it being my intention, however, that this gift shall not take effect until my death.*" which declaration would have rendered the attempted gift nugatory, even though it were accompanied by *manual delivery*. *Basket v. Hassell*, 107 U. S., 602. Mr. Willard expressly declared, and without any qualification: "This is the property of Mrs. Caleb O. Willard and Kate Willard Boyd, to be divided equally." And he supplemented this express declaration by a form of delivery which he believed to be complete, and which, as it seems to me, was complete in contemplation of law, in view of the fact that Mrs. Willard was at the time an occupant of the room with him, the basket was in their presence, in plain view, displaying an emblem of transfer of ownership which was certainly as effectual as would have been an oral statement by him that "This is the property of Mrs. Caleb O. Willard and Kate Willard Boyd, to be divided equally," if made to Mrs. Willard, and, moreover, the basket was occupying a place beside Mrs. Willard's own trunk, where he had directed his confidential secretary to place it. And, in connection with this written announcement of transfer of ownership by Mr. Willard, it is also to be noted that he had some days before stated to Mrs. Willard that there was something in the basket that she would like better than peaches—indicating clearly that there was something there for her, which she impliedly, of course, agreed to accept; and he also stated to her, after the tag was placed upon the basket on July 30, that their daughter had been provided for, and would have something *absolutely* which would be "a plenty" for her.

A gift is, of course, presumed to have been accepted by a donee, even though he had no actual knowledge of it whatever, if the same be beneficial to him (vol. 14, Am. & Eng. Enc. of Law [2d ed.], pp. 1027, 1061). Moreover, when a donee resides with the donor, the change of possession required to support the gift is necessarily only a relative one, to be determined from the particular circumstances of each particular

case (vol. 14, Am. & Eng. Enc. of Law [2d ed.], p. 1024).

In the case at bar, the gift was manifestly beneficial to the donees, and they must be presumed to have accepted it; and the necessary change of possession to effectuate the gift took place, because Mr. and Mrs. Willard were residing together, the basket was in their room, in plain view, displaying a written transfer of ownership, and occupied a place beside Mrs. Willard's own trunk, where Mr. Willard had directed his confidential secretary to place it, and, being valid and effectual as to Mrs. Willard, it was also valid and effectual as to Mrs. Boyd (the daughter), because from the moment these securities were delivered to Mrs. Willard she would hold one-half of them in trust for Mrs. Boyd, her co-beneficiary.

These conclusions are fully supported by the case of *Ellis v. Secor*, 31 Mich., 135, and also by the case of *Duval v. Dye*, 7 L. R. A. (Ind.), 439, 441, in addition to the authorities already referred to; and a decree will therefore be entered dismissing the bill of complaint in so far as it asks that the defendants, Lucy Parker Willard and Kate Willard Boyd, be enjoined from setting up a claim to these securities, and awarding to said defendants appropriate relief in consequence of their ownership of these securities.

#### Accident—Negligence—Fellow-Servants.

The Supreme Court of Minnesota held, in the case of *Doerr v. The Daily News Publishing Company*, that where an operator or pressman of a printing press, while engaged with his helper in the usual duty of running the machine, starts it without giving proper warning to the helper, who by reason thereof is injured by having his fingers drawn between the rollers, the relation between them is that of fellow-servants, notwithstanding that the helper is under the direction and control of the operator in respect to the running of the press.

#### Lease—Option to Purchase.

In the case of *Thomas v. The Bauern-Schmidt-Straus Brewing Company*, recently decided by the Court of Appeals of Maryland, it appeared that a lease for one year contained a proviso "that this agreement, with all its provisions and covenants, shall continue in force from term to term after the expiration of the term above mentioned, or of any term thereafter, by giving at least thirty days' previous notice thereof in writing." The lease also contained a subsequent stipulation "that the said tenants shall have the right to purchase said property at the end of said term for the sum of two thousand dollars." A little over fifteen months after the lease was executed, but while it was still in force, the appellee notified the appellant that it desired to avail itself of the option to purchase the property and tendered the amount above mentioned, which the appellant declined to receive. The court held that the option was a continual obligation running with the lease; that the contract was not lacking in mutuality, and that the decree of the lower court requiring the specific performance of the contract for a sale of the property should be affirmed.

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## RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

## Legal Notices.

### FIRST INSERTION.

**Barnard & Johnson, Attorneys**

**Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Mary Jane Sinclair**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of February, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of February, 1906. **ELLA H SINCLAIR**, 1810 Corcoran st. N. W. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,889. Admin. [Seal.] 7-3t

**W. H. Marlow, Jr., Solicitor**

**In the Supreme Court of the District of Columbia.  
Mary T. Schulz v. William Willock et al.  
Equity, No. 25,923.**

The object of this suit is to perfect complainant's title to parts of lots 1 and 2, square 454, in the city of Washington, District of Columbia, beginning for the same on G street 25 feet west from southeast corner of said square and running thence west along line of said G street 77 feet, thence north 80 feet to an alley, thence east along said alley 77 feet, and thence south 80 feet to the place of beginning. On motion of complainant, by her solicitors, **Walter H. Marlow, Jr.**, and **Joseph N. Saunders**, it is this 15th day of February, A. D. 1906, ordered that the defendants, **Michael Griffin** and **Mary Griffin**, his wife, **William Willock**, and his unknown heirs, devisees, and assignees, if he be dead, and the unknown heirs, devisees, and assignees of **Richard H. Douglass**, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of forty (40) days, exclusive of Sundays and legal holidays, from the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order shall be published in The Washington Law Reporter and The Washington Times once a week for four successive weeks, sufficient cause having been shown for dispensing with a longer period of publication. [Seal]

**WENDELL P. STAFFORD**, Justice. True copy. Test: **J. R. Young**, Clerk, by **J. W. Latimer**, Asst. Clerk. 7-3t

## Legal Notices.

**Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Matthew Tierney**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of August, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of February, 1906. **ANNIE TIERNEY**, 223 9th st. N.E. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,071. Administration. [Seal.] 7-3t

**Berry & Minor, Solicitors**

**In the Supreme Court of the District of Columbia.  
William H. Saunders, etc., Complainants, v. Frank W. Powell et al., Defendants.  
In Equity, No. 25,991.**

The object of this suit is to establish the ownership of a fund of \$1,000, deposited in the registry of this court. On motion for counsel for defendant, **H. Clay Campbell**, it is, this 13th day of February, 1906, ordered that the defendant, **Frank W. Powell**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. [Seal] **HARRY M. CLABAUGH**, Chief Justice. A true copy. Test: **J. R. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. 7-3t

**Robert S. Hume, Solicitor**

**In the Supreme Court of the District of Columbia,  
Holding a Bankruptcy Court.**

**In the Matter of the Estate of John F. McCormick, Alleged Bankrupt. Bankruptcy Number 486.**

The object of these proceedings is to have **John F. McCormick** declared an involuntary bankrupt. On motion of the petitioning creditors, it is, this 14th day of February, A. D. 1906, ordered that **John F. McCormick** cause his appearance to be entered herein on or before the tenth day occurring after the last day of the publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and The Washington Post once a week for two consecutive weeks. By **HARRY M. CLABAUGH**, Chief Justice. A true copy. Test: **J. R. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. 7-3t

**Gordon & Gordon, Solicitors**

**In the Supreme Court of the District of Columbia,  
New York Quarry Company, v. Edward L. Dent et al.  
Equity No. 19,029.**

Upon consideration of the report of **J. Holdsworth Gordon** and **William C. Prentiss**, trustees, filed herein, reporting the sale of the tract of land in the District of Columbia, described as follows: Beginning for the same at a point on the north line of **Linthicum** place, as said **Linthicum** place is laid down on a subdivision of part of **The Oaks**, recorded in the office of the surveyor for the District of Columbia, in County Book 7, page 86, thirty (30) feet west of the point where the west line of **Observatory** street, as shown on said subdivision, if extended, would strike the north line of said **Linthicum** place, and running thence westerly with the said north line of said **Linthicum** place to the point of intersection of said line with the direct prolongation of the west line of lot numbered eight (8) in said subdivision; thence northerly in a line in direct prolongation of the said west line of said lot 8 to the northern boundary of said tract known as **The Oaks**; thence northerly and easterly with the northern boundary of **The Oaks** to a point thirty (30) feet west from the west line of said **Observatory** street, if extended as aforesaid, and thence southerly in a straight line to the beginning; to **S. J. Harriott**, trustee, at and for the price of eight thousand five hundred dollars (\$8,500). It is by the court this eighth day of February, 1906, ordered that the said sale be ratified and confirmed unless cause to the contrary be shown on or before the 10th day of March, 1906; provided a copy of this order be published once a week for three successive weeks before said last mentioned day in The Washington Law Reporter, **WENDELL P. STAFFORD**, Justice. True copy. Test: **J. R. Young**, Clerk, by **J. W. Latimer**, Asst. Clerk. 7-3t



**Legal Notices.**

**T. Percy Myers and Benjamin S. Minor, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Tillotson E. Brown, Complainant, v. the Unknown**  
**Heirs, Alienees, and Devisees of William B. Hurst,**  
**Deceased, Defendants. In Equity, No. 25,954.**

The object of this suit is to establish title by adverse possession of the complainant to part of lot numbered one (1) in square numbered three hundred and ninety-seven (397), to wit: Beginning at a point on Eighth street northwest, twenty-nine (29) feet and two (2) inches north of the southeast corner of lot numbered one (1) in square numbered three hundred and ninety-seven, and running thence north along said Eighth street thirteen (13) feet and eleven (11) inches, thence west ninety-nine (99) feet and four (4) inches, thence south thirteen (13) feet and eleven (11) inches, thence east ninety-nine (99) feet and four (4) inches, to the place of beginning. On motion of the complainant, by his solicitor, it is, by the court, this 8th day of February, A. D. 1906, ordered that the defendants, the unknown heirs, alienees, and devisees of William B. Hurst, deceased, cause their appearance to be entered herein on or before the first rule day occurring after three months from the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published for three months, once a week for three successive weeks for the first month, and twice a month for each of the two succeeding months, in The Washington Law Reporter and The Washington Post. **WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk.**

feb 16, 23; mar 2; apr 6, 13, may 4, 11

**Brandenburg & Brandenburg, Attorneys**  
**Supreme Court of the District of Columbia.**

**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the State of Maryland and the District of Columbia, respectively, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **William H. Shock**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers on or before the 22d day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 22d day of January, 1906. **JAMES A. ROBINS**, 1328 Myrtle ave., Balto., Md.; **JAMES C. HISS**, 329 W. Lafayette ave., Balto., Md.; **ALFRED GEORGE**, 1404 15th st. N. W. Wash., D. C. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,586. Administration. [Seal.] 7-3t

[Filed February 8, 1906. J. R. Young, Clerk.]

**In the Supreme Court of the District of Columbia.**  
**Charles W. Steierson, Trustee, v. Mary A. Robinson et al.**  
**Equity No. 25,971. Doc. 57.**

The object of this suit is to secure a partition by sale of certain real estate situate in the city of Washington, District of Columbia, to wit: Part of original lot two (2), in square five hundred and seventy-nine (579), beginning for the same on D street south thirty-three (33) feet west from the southeast corner of said lot; running thence west on said street fifteen feet six inches (15 ft. 6 in.); thence north thirty-two (32) feet; thence east two feet six inches (2 ft. 6 in.); thence north one hundred and two feet six inches (102 ft. 6 in.) to the rear or north line of said lot; thence east thirteen feet on said north line; thence south one hundred and thirty-four feet six inches (134 ft. 6 in.) to the place of beginning, excepting the rear 7 feet 6 inches of said part of said lot, condemned August 30, 1876, by marshal's jury for an alley, as per plat recorded in liber R. H. L., 812, records of surveyor's office. On motion of the complainant, it is, this 8th day of February, 1906, ordered that the defendants, **Mary A. Robinson** and **Muriel Robinson**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order to be published

[Seal] once a week for three successive weeks in The Washington Law Reporter prior to said return day. **WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk.** 7-3t

Justice blanks of every description for sale at this office.

**Legal Notices.**

**John Raum, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Charlotte Beckett**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 7th day of February, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of February, 1906. **HENRY M. SMITH**, 2418 1/2 15th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,424. Administration. [Seal.] 7-3t

**Marion Duckett & Son, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Harriet C. Duckett**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of February, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of February, 1906. **MARION DUCKETT**, 685 F st. N. W. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,341. Administration. [Seal.] 7-3t

**Robinson White, Solicitor**

**In the Supreme Court of the District of Columbia,**  
**Holding a Special Term Thereof in Equity.**  
**Charles White, Jr., Petitioner, v. Henry F. Getz**  
**Defendant. Equity 25,948. No. 57.**

The object of this suit is to substitute a trustee in the place and stead of **Henry F. Getz**, surviving trustee under a deed of trust dated the 30th day of March, A. D. 1883, and recorded in Liber No. 1779 at folio 408 et seq., one of the land records of the District of Columbia, from **Charles White, Jr.**, and **Flora White**, his wife, to **Oliver T. Thompson** and **Henry F. Getz**, trustees, conveying a one undivided half interest in lots numbered fifteen, sixteen, seventeen, and eighteen in square numbered five hundred and four in the city of Washington, District of Columbia. On motion of the petitioner by his solicitor, **Robinson White**, and it appearing to the court that the summons issued herein against the defendant, **Henry F. Getz**, has been returned not to be found, and the non-residence of the said defendant having been proved to the satisfaction of the court, it is, this 8th day of February, A. D. 1906, ordered that the said defendant, **Henry F. Getz**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the first day of the publication of this order; otherwise the cause will be proceeded with as in case of default. Provided this order be published once a week for three successive weeks in The

[Seal] Washington Law Reporter. **HARRY M. CLABAUGH**, Chief Justice. A true copy. Test: **J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk.** 7-3t

**Roach & Watkins, Attorneys**

**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**In Re Estate of Henry Alle, Deceased.**

No. 13,455.  
 Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, by **Elizabeth Waldkoni**, sister of said deceased, it is ordered, this 18th day of February, A. D. 1906, that notice be and hereby is given to **Rebecca Smith**, Baltimore, Md., **Caroline Strobel**, Ramsey, Ill., and **Mary Strobel**, Ramsey, Ill., and to all others concerned, to appear in said court on the 19th day of March, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and in The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before

[Seal] said return day. **WENDELL P. STAFFORD**, Justice. A true copy. Attest: **Wm. C. Taylor**, Deputy Register of Wills. 7-3t

**Legal Notices.**

**Charles J. Murphy, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**  
**Estate of Mary W. Ryan, Deceased.**  
**No. 18,446. Administration.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Charles J. Murphy, the executor in said will named, it is ordered, this 9th day of February, A. D. 1906, that notice be and hereby is given to Michael H. Kennedy, Margaret Kennedy, George McKenney, and Mrs. Thomas Conway, and to all others concerned, to appear in said court on Monday, the 19th day of March, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 7-3t

**W. H. Marlow, Jr., Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Mary T. Schulz v. William Willock et al.**  
**Equity, No. 25,928.**

The object of this suit is to perfect complainant's title to parts of lots 1 and 2, square 454, in the city of Washington, District of Columbia, beginning for the same on G street 25 feet west from southeast corner of said square and running thence west along line of said G street 77 feet, thence north 80 feet to an alley, thence east along said alley 77 feet, and thence south 80 feet to the place of beginning. On motion of complainant, by her solicitors, Walter H. Marlow, Jr., and Joseph N. Saunders, it is, this 15th day of February, A. D. 1906, ordered that the defendants, Michael Griffin and Mary Griffin, his wife, William Willock, and his unknown heirs, devisees, and allenees, if he be dead, and the unknown heirs, devisees, and allenees of Richard H. Douglass, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of forty (40) days, exclusive of Sundays and legal holidays, from the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order shall be published in The Washington Law Reporter and The Washington Times once a week for four successive weeks, sufficient cause having been shown for dispensing with a longer period of publication. [Seal] WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 7-3t

**FOURTH INSERTION.**

**John M. George, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**George C. Reiser, Lunatic, by James E. Scott, His**  
**Committee, Complainant, v. The Unknown Heirs,**  
**Allenees, and Devisees of Gullan Ludlow, Center**  
**Swet, Vander Swet, and James Doyle et al.**  
**In Equity. No. 25,918. Docket No. 57.**

The object of this suit is to establish the title of the complainant against the defendants by adverse possession to the north thirty-one (31) feet and four (4) inches by the full depth of original lot numbered twenty-four (24) in square four hundred and ninety-nine (499), in the city of Washington, District of Columbia. On motion of the complainant, it is, this 8th day of February, A. D. 1906, ordered that the defendant, John Stafford, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs or devisees or allenees of Gullan Ludlow, Center Swet, Vander Swet, and Patrick Doyle, cause their appearance to be entered herein on or before the first rule day, occurring three weeks after the first publication of this order, good cause therefor having been shown to the satisfaction of the court; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for four successive weeks prior to said return day in The Washington Law Reporter and The Washington Post. By the court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. feb 9-16-23; mar 2

**Legal Notices.****FIFTH INSERTION.**

**A. Leftwich Sinclair, Attorney**  
**[Filed January 30, 1906.]**

**In the Supreme Court of the District of Columbia,**  
**Holding a Special Term as a District Court of the**  
**United States for the District of Columbia.**

In the matter of the payment of damages resulting to adjacent property from changes in the grade of streets, avenues, and alleys authorized by the act of Congress approved February 28, 1903, relating to the construction of a Union Railroad Station in the District of Columbia. No. 671, District Court Docket No. 2. Notice is hereby given that we, the undersigned, having been designated and appointed by the Supreme Court of the District of Columbia, holding a special term as a United States District Court for the District of Columbia, as a commission to appraise the damages resulting to adjacent property from changes in the grade of streets, avenues, and alleys authorized by the act of Congress approved February 28, 1903, relating to the construction of a Union Railroad Station in the District of Columbia, will meet at 10.30 o'clock A. M. on Monday, the 13th day of March, A. D. 1906, at the United States Court House (City Hall), in the District of Columbia, in a room to be assigned us by the United States marshal for said District, for the purpose of viewing the property affected by the changes in the grade of the following-named streets, avenues, and alleys, and hearing testimony touching the damages resulting to real property from said changes of grade, in accordance with the terms and provisions of the act of Congress approved April 22, 1904, entitled "An act to provide for payment of damages on account of changes due to construction of the Union Station, District of Columbia," to wit: M street northeast, between First and Fourth streets; H street northeast, between Second and Third streets, in front of square numbered seven hundred and fifty-one (751); H street northeast, between Second and Third streets, and Second street northeast, between G and H streets, around square numbered seven hundred and fifty-two (752); alley in square numbered six hundred and twenty-five (625), bounded by Massachusetts avenue, North Capitol, and G streets northwest; Massachusetts avenue northwest, between North Capitol street and New Jersey avenue; F street northwest, between North Capitol and New Jersey avenue. All owners of real property damaged by the changes in the grade of said streets, avenues, or alleys will file a petition with us, in this cause, for an allowance of damages within sixty (60) days after the said 12th day of March, A. D. 1906. The aforesaid act of Congress approved April 22, 1904, provides that upon the failure of any such owner to thus present his claim, within said period, his right to do so shall cease and determine. CHAS. A. BAKER, GEORGE W. [Seal] MOSS, GEORGE SPRANSY, Commission to Appraise Damages. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham Asst. Clerk. 6-4t

**SIXTH INSERTION.**

**L. Cabell Williamson, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**L. Cabell Williamson, Mary E. Fitch, Trustees,**  
**Complainants, v. The Unknown Heirs, Allenees, or**  
**Devisees of John Davis, Henry Ruford, and John**  
**H. Eaton, Defendants. Equity No. 25,681.**

The object of this suit is to perfect complainants' title to lot numbered and lettered "A" in J. B. Hollidge's subdivision of lots, in square numbered five hundred ten (510) in the city of Washington, District of Columbia, as said subdivision is of record in Book C. H. B., page 145, of the records of the office of the surveyor of said District. On motion of the complainants, it is, this 4th day of January, A. D. 1906, ordered that the defendants, the unknown heirs, allenees, or devisees of each of the following named persons, to wit: John Davis, Henry Ruford, and John H. Eaton, cause their appearance to be entered herein, on or before the first rule day occurring after three months from the day of the first publication of this order; otherwise the cause will be proceeded with as in cases of default. Provided a copy of this order be published for three months, once a week for three successive weeks for the first month and twice a month for each of the two succeeding months, in The [Seal] Washington Law Reporter and Washington Post. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. Jan 5-12-19; feb 2-9; mar 2-9

Justice blanks of every description for sale at this office.

# The Washington Law Reporter

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## DECISIONS BY THE COURT OF APPEALS.

Elevator Accident; Evidence; Indemnity; Insurance.

In the case of the Capital Construction Company v. Hollzman, the appeal was from a verdict in favor of the plaintiff in an action for personal injuries. The plaintiff, while riding in an elevator in the Portland apartment house was injured by the fall of the car, and recovered a judgment for \$10,000. The Court of Appeals, in an opinion by Mr. Justice Duell, reverses the judgment, holding that the trial court erred in admitting testimony, elicited on cross-examination of witnesses for defendant, which tended to show that the defendant was indemnified against loss by a casualty insurance company, such evidence, in the opinion of the court, having a tendency to increase the amount of damages awarded by the jury.

Condemnation of Land by Railroad Company; Appeal Dismissed.

In Winslow v. Baltimore and Ohio Railroad Company, the appeal was from a final order of the court below in condemnation proceedings instituted by the appellee to acquire part of a tract of land belonging to the appellants. The proceeding was brought pursuant to the provisions of the act of Congress providing, among other things, for the elimination of grade crossings. In the Court of Appeals a motion was made by the railroad company to dismiss the appeal; and the motion was granted, the court,

in an opinion by Mr. Justice McComas, holding that the appeal would not lie, for reasons stated at length in the opinion.

Railroad Company; Condemnation of Land; Mandamus to Compel Denied.

In Riley v. Baltimore and Ohio Railroad Company, the appeal was from an order of the court below, dismissing a petition for a writ of mandamus to compel the railroad company to condemn certain lands owned by the petitioner, on the ground that, by reason of the location of said lands with reference to other land previously taken by defendant for the location of freight terminals in connection with the new union station site, they were so affected as to entitle her to compel the condemnation under the provision of the grade crossing act. The Court of Appeals, in an opinion by Mr. Justice McComas, affirms the order, holding that, as the defendant company does not need the petitioner's land, it has no right to condemn the property, and can not be compelled to exercise a right not vested in it.

Ejectment; Proof of Will; Construction of Devise.

In Young v. Norris-Peters Company, the action was in ejectment, and the appeal was from a judgment for defendant entered upon a verdict directed by the trial court. One of the questions involved was as to whether a will which became operative prior to the act of June 8, 1898, could be proved in an ejectment proceeding by the subscribing witnesses, or whether the exclusive method for the proof of such wills was by proceedings in the probate court. It was contended by the appellant that the will of a person dying before the passage of that act could not be admitted in ejectment to show title unless admitted to probate. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, affirms the ruling of the trial court, which held that proof of the will might be made in the ejectment proceeding. It was also held, construing the language of the will, that the devise in question passed a fee simple estate.

Negligence; Dangerous Premises; Unprotected Pond.

In Sullivan, administratrix, v. Huidekoper, the action was brought to recover damages for negligently causing the death of plaintiff's intestate, the specific act of negligence alleged being the maintenance of an unprotected pond on the premises of defendant. A small child of the appellant was drowned while swimming in the pond, and the mother sued for damages on the ground that it was negligence not to have fenced in the said pond. The trial court sustained a demurrer to the declaration, holding

that the defendant was not liable; and the Court of Appeals, in an opinion by Mr. Justice Duell, affirms the judgment, holding that the decision of the Supreme Court of the United States in what are known as the "Turntable Cases" could not be extended to include the case at bar.

**Landlord and Tenant; Appeal; Failure to Give Supersedeas Bond.**

In *Dowling v. Buckey*, the question upon which the case was decided was, whether an appeal will lie, in an ordinary landlord and tenant case, from the judgment of a justice of the peace in favor of the plaintiff, without the giving of a supersedeas bond? The Court of Appeals, in an opinion by Mr. Justice Duell, holds that under sections 1232 and 1233 of the Code, an appeal is permitted in such cases without the giving of a supersedeas bond; and the undertaking in the case on hearing being sufficient as an ordinary appeal bond, it is held that the court below erred in dismissing the appeal from the justice of the peace, and the order of dismissal is reversed.

**Alimony Pendente Lite; Contempt.**

In *Lane v. Lane*, the appeal was from an order of the court below adjudging the appellant in contempt for failure to obey an order requiring him to pay alimony pendente lite. The defendant, who was in receipt of a monthly salary of \$100, made two monthly payments of \$25 each, and then stopped work and refused to pay more, claiming inability to comply with the order. The Court of Appeals, in an opinion by Mr. Justice Duell, affirms the order, remarking that the money expended by the appellant upon this frivolous appeal would have enabled him to comply with the order of the court below.

**Wills; Construction of Devise.**

In *Atkins v. Best*, the appeal was from a decree of the court below in a suit brought to construe the last will and testament of Kate Best Atkins. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, affirms the decree of the court below by which the devise in question was held to pass a fee simple estate.

**Highways; Power of District Commissioners to Narrow Streets Denied.**

In *Walter et al. v. Macfarland et al.*, the appeal was from an order of the court below dismissing a bill filed to enjoin the Commissioners of this District from reducing the width of the roadway in G street northeast. The question involved in the case was as to whether or not the power to make such alterations in the

streets is vested in the Commissioners; and the Court of Appeals, in an opinion by Mr. Chief Justice Shepard, denies that such power exists. The exclusive control of the streets and the power to make regulations for keeping them in repair does not, says the court, necessarily imply the power to change their width at discretion after they have been established and improved and gone into public use. The decree of the court below was reversed.

**Libel; Service of Process on Agent of Foreign Corporation.**

In *Ricketts v. Sun Printing and Publishing Association*, the action was for an alleged libel published in the New York Sun, and process was served upon its Washington correspondent at its office in this city. Subsequently the trial court quashed the service on the ground that the defendant was a foreign corporation not engaged in business in this city, and the plaintiff appealed. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, reverses the order of the court below, holding that as the defendant corporation, in addition to publishing a newspaper, operated a press service and contracted for and furnished news service to other newspapers, and that as it appeared also that the Sun's Washington office was engaged in furnishing other newspapers with this service, it was "doing business" in this District within the meaning of those terms in the code, and the service on the Washington correspondent was valid and binding.

**Damages for Wrongful Suing Out of Injunction.**

In the cases of *Cortelyou v. Houghton et al.*, and *Cortelyou v. Bates & Guild Co.*, in which the same questions were presented, the decrees of the court below were reversed. By those decrees the right of the appellant, as Postmaster-General, to recover damages resulting from the suing out of injunctions against him was denied, on the ground that the damages sought to be recovered were damages to the United States, which was not a party to the action. The Court of Appeals, in opinions by Mr. Justice Duell, holds that the same rule governed as in suits between individuals, and directs the entry of a decree in favor of the appellant in each case against the principals and sureties in the injunction bonds for the damages resulting.

**Building Contracts; Action on Bond of Contractor; Damages.**

In *Mercantile Trust Company v. Hensey*, the appeal was from a judgment for the plaintiff in an action against the sureties on the bond of a contractor to recover damages for the failure of the principal to perform his contract in accord-

ance with the plans and specifications. The appellant contended that the architect's certificate should be treated as conclusive, that there was no sufficient proof of damages, and that the bond did not cover damages for delay. The trial court denied these contentions, and its judgment is affirmed in an opinion by Mr. Justice Duell.

**Ejectment; Adverse Possession.**

In *Briel v. Jordan*, the appeal was from a judgment for defendant entered upon a verdict directed by the trial court in an action of ejectment. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, affirms the judgment, holding that the defendant had clearly established title to the property by adverse possession.

In *Clements v. Mutersbaugh*, the appeal was from a judgment of the court below in favor of the plaintiff in an action of assumpsit. The judgment is affirmed, in an opinion by Mr. Chief Justice Shepard.

In *Adriaans v. Reilly*, a decree of the court below dismissing, upon demurrer thereto, a bill of review, is affirmed in an opinion by Mr. Justice Duell.

In *Anderson v. Wells*, the decision of the Commissioner of Patents is affirmed in an opinion by Mr. Justice McComas.

**Bankruptcy—Action to Recover Preference—Reasonable Cause, etc.**—In an action by a trustee to recover, as an alleged preference, payments to a creditor made within the four-months' period, reasonable cause to believe that a preference was intended does not require proof that defendant had either actual knowledge or actual belief as to insolvency of the bankrupt at the time of payments, but only of such surrounding circumstances as would lead an ordinarily prudent business man to conclude that a preference was intended. *Sundheim v. Ridge Avenue Bank*, 15 Am. B. R., 132.

**Sales—Liability for Necessaries.**—A husband and father held not relieved from liability for necessities furnished for the family, by an arrangement with adult daughters to run the house. *Wentz v. McCann*, 95 N. Y. Supp., 462.

**Negligence—Care Required Toward Persons Invited on Premises**—One in control of premises, and serving meals thereon, was bound to have the premises in a reasonably safe condition. *Sohnizer v. Phillips*, 95 N. Y. Supp., 478.

**Court of Appeals of the District of Columbia.**

THE UNITED STATES OF AMERICA,  
APPELLANT,

v.

THE BALTIMORE AND OHIO RAILROAD  
COMPANY.

SAFETY APPLIANCE ACTS; JURISDICTION OF THE SUPREME COURT OF THIS DISTRICT TO TRY ACTION TO RECOVER PENALTIES.

1. The special term of the Supreme Court of the District of Columbia, known as the circuit court, is the tribunal in this District having jurisdiction to enforce the penalties prescribed for the violation by a railroad company of the provisions of the act of Congress of March 2, 1893, and the several acts amendatory thereof, known as the "Safety Appliance Acts."
2. An order of the court below sustaining a demurrer to the declaration in an action by the United States against a railroad company to recover the penalty prescribed by said acts, on the ground that the special term known as the circuit court was without jurisdiction to try the cause, reversed.

No. 1583. Decided February 6, 1906.

APPEAL (specially allowed) by the United States from an order of the Supreme Court of the District of Columbia, at Law, No. 47,602, sustaining a demurrer to a declaration in an action to recover penalties for violation of act of Congress of March 2, 1893, as amended. Reversed.

*Mr. D. W. Baker* and *Mr. Jesse C. Adkins* for the United States.

*Mr. Geo. E. Hamilton* and *Mr. M. J. Colbert* for the appellee.

Mr. Justice McCOMAS delivered the opinion of the Court:

This is a special appeal from the ruling of the Supreme Court of the District of Columbia sustaining a demurrer to a declaration filed by the appellant, the United States, in a suit to recover from the Baltimore and Ohio Railroad Company, the appellee, a penalty of one hundred dollars for the violation of an act of Congress, approved March 2, 1893, amended by the acts of April 1, 1896, and the act of March 2, 1903, these collectively being known as the Safety Appliance Acts.

Section 4 of the first named act declares it "Unlawful for any railroad company to use any car in interstate commerce that is not provided with secure grab-irons or handholds in the ends and sides of each car for greater security to men in coupling and uncoupling cars," etc.

Section 6 of that act as amended April 1, 1896, imposes upon such common carrier "hauling or permitting to be hauled or used on its line any car in violation of any of the provisions of this act . . . a penalty of one hundred dollars for each and every such violation, to be recovered in a suit to be brought by the United States district attorney in the District Court of the United States having jurisdiction in the locality where such violation shall have been committed."

The act of March 2, 1903, extends the provisions and requirements of the prior act, and provides that these "shall be held to apply to common carriers by railroads in the Territories

and the District of Columbia, and shall apply in all cases . . . and the provisions and requirements hereof and of said acts relating to train brakes, automatic couplers, grab-irons, and the height of draw-bars shall be held to apply to all trains, locomotives, tenders, cars, and similar vehicles used on any railroad engaged in interstate commerce, and in the Territories and the District of Columbia," etc.

This action is an action of debt, and the declaration contains two counts: The first count declares that a certain car described, not provided with grab-irons or handholds as required by law, was hauled by the appellee from Washington, within the District of Columbia, to Pencoed, in Pennsylvania. The second count recites that the same car, so unprovided with grab-irons, etc., was hauled over the appellee's railroad in the District of Columbia into the State of Maryland. The declaration claims one hundred dollars, the penalty named in the statute.

The appellee demurred and the court sustained the demurrer. The appellee, in support of the demurrer, insists that the special term of the Supreme Court of the District of Columbia, known as the "Circuit Court," has no jurisdiction to try the cause set out in the declaration.

The appellee says that the act of Congress, as amended, in terms provides that the penalty here sued for, the violation of the act being admitted, can only be recovered in a suit to be brought in the District Court of the United States; that the United States District Courts constitute a distinct system, not including the Supreme Court of the District of Columbia. If Congress has conferred upon the Supreme Court of the District the jurisdiction possessed and exercised by the judges of the Circuit and District Courts of the United States, Congress has failed in these statutes to express its intention to give this court this jurisdiction in this class of cases, and has not provided the Supreme Court of the District, having power to hold a term as District Court of the United States, with the machinery to try this case, for the United States District Court holding a special term has no power to summon and empanel a jury, and in a case like this the appellee is entitled to a trial by jury according to the common law. The appellee concludes, therefore, that this act is not applicable to the District of Columbia, and suggests as a consolation that the penalty for the violation set out in the declaration could be recovered in the United States District Court for Maryland, or in the same court in the State of Pennsylvania, and that probably Congress purposely limited the punishment for such violation of a very humane statute to the Federal courts in the States, intentionally remitting punishment for violations of laws intended to protect brakemen and other railway employees everywhere, to courts in all the States and Territories of the Union except to the courts in this Federal District where Congress sat when it enacted these statutes to promote the safety of employees and travelers upon railroads everywhere in the Union.

Surely Congress did not intend to deprive railway employees, while in this District, from the benefits of this legislation, because by the

amendment of March 2, 1903, it expressly provided "that the provisions and requirements of the act" of March 2, 1893, as amended by the act of April 1, 1896, "shall be held to apply to common carriers by railroads in the Territories and the District of Columbia." It is the duty of the courts of this District to give effect to this law, if they have the power.

In *Johnson v. Southern Pacific Company*, 196 U. S., 1, 14, the Supreme Court criticised the Circuit Court of Appeals for its adverse decision, saying:

"We are unable to accept these conclusions, notwithstanding the able opinion of the majority, as they appear to us to be inconsistent with the plain intention of Congress, to defeat the object of the legislation, and to be arrived at by the inadmissible narrowness of construction."

"And as Chief Justice Parker remarked, conceding that statutes in derogation of the common law are to be construed strictly, 'they are also to be construed sensibly, and with a view to the object aimed at by the legislature.' *Gibson v. Janney*, 15 Mass., 205." *Ib.*, 17.

"The primary object of the act was to promote the public welfare by securing the safety of employees and travelers, and it was in that aspect remedial, while for violations a penalty of one hundred dollars, recoverable in a civil action, was provided for, and in that aspect it was penal."

"Moreover, it is settled that, 'though penal laws are to be construed strictly, yet the intention of the legislature must govern in the construction of penal as well as other statutes; and they are not to be construed so strictly as to defeat the obvious intention of the legislature.' *United States v. Lacher*, 134 U. S., 624." *Ib.*, 18.

In the same case the Supreme Court referred to the history of this legislation, and quoted from President Harrison's message, with approval, his statement that during a single year 2,660 employees were killed and 26,140 were injured for want of such safety appliances, and, also, President's Harrison's emphatic utterance: "It is a reproach to our civilization that any class of American workmen should, in the pursuit of a necessary and useful vocation, be subjected to a peril of life and limb as great as that of a soldier in time of war." The strong expressions of the Supreme Court and its purpose to give effect to the Safety Appliance Acts confirm us in believing that Congress did not intend to exclude the District of Columbia from the benefits conferred by this act upon all the rest of the Union.

Section 6, before quoted, imposed the penalty here sued for, "For each and every such violation, to be recovered in a suit to be brought by the United States District Attorney in the District Courts of the United States having jurisdiction in the locality where such violation shall have been committed." It designated the United States District Attorney, a Federal official provided in every State and Territory and in the District of Columbia, and named the only court of the United States armed with process and with power to try common law civil actions for recovering penalties and affording juries to try the offender according to the common law. It is conceded that in the forty five States the

statute can be enforced. Its beneficent operation, by the argument of the appellee, is denied in all the Territories and in the District of Columbia. In the Territories, several of them now gridironed with railroads, there is no district court of the United States. There are only supreme courts of the Territory and district courts of the Territory, and here we have only the Supreme Court of the District of Columbia.

The Safety Appliance Acts were a regulation of commerce. In the Safety Appliance Acts Congress was exercising its power to regulate commerce, and as was said in *Stoutenburgh v. Hennick*, 129 U. S., 148:

"The power granted to Congress to regulate commerce is necessarily exclusive whenever the subjects of it are national or admit of only one uniform system or plan of regulation throughout the country . . . The business referred to is thus definitely assigned to that class of subjects which calls for uniform rules and national legislation, and is excluded from that class which can be best regulated by rules and provisions suggested by the varying circumstances in different localities and limited in their operation to such localities respectively."

There seems little doubt, therefore, that Congress intended the acts of March 2, 1893, and of April 1, 1896, to regulate all the railroads throughout the country in all parts of the country, including the District of Columbia, but if there were a doubt, it was removed when by the act of March 2, 1903, Congress expressly provided that the provisions and requirements of these prior acts "shall be held to apply to common carriers by railroads in the Territories and the District of Columbia."

Shortly before it passed this statute Congress had provided in section 1 of the Code of this District that "all general acts of Congress not locally inapplicable in the District of Columbia, and all acts of Congress by their terms applicable to the District of Columbia and to other places under the jurisdiction of the United States, in force at the date of the passage of this act, shall remain in force, except in so far as the same are inconsistent with, or are replaced by, some provision of this Code."

It would seem, therefore, that when Congress, in section 6 of this statute, imposed a penalty for every violation of these safety appliance statutes, and directed that the same should be recovered in a suit to be brought in the District Court of the United States "having jurisdiction in the locality" where such violation shall have been committed, Congress intended to include the court of the United States in the District of Columbia, which was the proper tribunal to take jurisdiction in this locality of such a suit for the penalty incurred by reason of a violation of this statute in this District.

"Congress has express power 'to exercise exclusive legislation in all cases whatsoever' over the District of Columbia, thus possessing the combined powers of a general and of a State government in all cases where legislation is possible." *Stoutenburgh v. Hennick*, supra, 147.

In the new Code of the District of Columbia Congress had very recently declared, by section 61, that the Supreme Court of the District

"shall possess the same powers and exercise the same jurisdiction as the circuit and district courts of the United States, and shall be deemed a court of the United States;" and,

In section 62, had provided that the justices of said court "shall severally possess the powers and exercise the jurisdiction possessed and exercised by the judges of the circuit and district courts of the United States;" and,

By section 63, that "said court shall hold a general term and special terms;" and

By section 64, that "the special terms of said court shall be known, respectively, as the circuit court, the equity court, the criminal court, the probate court, and the district court of the United States."

While granting the Supreme Court of the District the powers of a district and of a circuit court of the United States, since Congress possessed the combined powers of a general and of a State government over the District of Columbia, Congress had wisely distributed the powers of this court so as to meet the necessities of a State judiciary system combined with the necessities of a Federal judiciary system, which latter includes the circuit and district courts of the United States. Therefore, Congress further provided—

In section 66, that "all causes in said court shall be heard and determined in special terms. And the several terms are declared to be term. of the supreme court, and the . . . acts of said several terms shall be deemed . . . acts of the supreme court;" and,

In section 69, further provided "all common law civil suits shall be tried and determined in the circuit court, except as hereinafter provided;" and

In section 83, provided that "the trial of crimes and misdemeanors . . . shall be in the Supreme Court of the District of Columbia holding a special term as a criminal court, except such misdemeanors as are in the jurisdiction of the Police Court;" etc., and

In section 84, that "the said District court shall have and exercise the same powers and jurisdiction as the other district courts of the United States, and such further special jurisdiction as may from time to time be conferred by Congress, and of all proceedings instituted in exercise of the right of eminent domain."

In section 85 Congress defined the jurisdiction of the equity court and the practice therein.

Section 116 defines the jurisdiction of the probate court.

Sections 198 to 217, inclusive, provide for the drawing and impaneling of petit juries in the circuit and criminal courts as well as of grand jurors in the criminal courts.

Thus the Supreme Court of the District of Columbia was made by Congress a depository of the powers of Federal and State courts combined, and therefore, while it was given all the powers of a district court of the United States, the supreme court's special term, known as the "circuit court," also became the depository of its power over all common law civil actions such as the circuit court in the State of Maryland tried and determined, and also over all common law civil actions such as a district court of the United States could try and determine.



Therefore, when Congress extended the Safety Appliance Acts to the District of Columbia, Congress knew that the special term described as the Circuit Court of the District of Columbia was the court to take jurisdiction of a suit for the penalty prescribed in section 6, and the United States district attorney properly brought the suit in that court as the court "having jurisdiction in the locality where such violation" had been committed.

It also happened that by section 84 Congress gave to the District court the powers and jurisdiction of the other district courts of the United States, and further jurisdiction specified in that section, and knew that it had not provided the District court in special term with a jury to try a suit like the action in this case, which is triable by a jury according to the common law. This instrument of justice Congress had distributed to the circuit court by section 69, before mentioned.

We are of opinion, therefore, that such power to try common law civil actions such as this suit, for this penalty, Congress intended should be tried in the circuit court special term of the Supreme Court of the District of Columbia.

The remarks of Justice Matthews in *Metro-politan Railroad Company v. Moore*, 121 U. S., 571, in speaking of the reorganization of the courts of this District, show that Congress established here a single court and distributed the powers thereof, and the language applies to the present status of these courts under the Code:

"It established a single court to be called the Supreme Court of the District of Columbia, having general jurisdiction in law and equity. It gave to that court the same jurisdiction as was then possessed and exercised by the Circuit Court of the District of Columbia, and to the justices of the new court the power and jurisdiction of the judges of the circuit court. It also gave to each of the justices of the court power to hold a district court of the United States for the District of Columbia, with all the powers and jurisdiction of other district courts of the United States; and also to hold a criminal court for the trial of all crimes and offenses arising within the District, with the same powers and jurisdiction as was then possessed and exercised by the Criminal Court of the District of Columbia. All the courts, therefore, previously existing in the District of Columbia, as separate and independent tribunals, having special and diverse jurisdictions, were consolidated into the new Supreme Court of the District of Columbia." We conclude that the Supreme Court of this District is the tribunal in this District, according to the distribution of its powers and duties as made by Congress, having jurisdiction to enforce the penalties provided by this general law regulating commerce, the Safety Appliance Acts, whenever the same may be violated in this District, and that the District attorney has rightly instituted this suit in the special term of the circuit court "having jurisdiction in this locality" to try such suit for such penalty for such violation of the Safety Appliance Acts as is set forth in the declaration, and that the learned court below should have overruled the demurrer of the appellee. This is an action of debt. It is a civil cause and

a common law action, and the circuit court is the special term which affords a jury trial to the appellee.

Chapter 3 of the Revised Statutes relating to "District Courts—jurisdiction," section 563, defines the jurisdiction of district courts in the United States. Its third paragraph gives to the United States district courts jurisdiction "of all suits for penalties and forfeitures incurred under any law of the United States," and its fourth paragraph gives to the same court jurisdiction over "civil suits at common law brought by the United States or by any officer thereof and authorized by law to sue." It is of common knowledge that for nearly a half century all such suits have been brought in the Circuit Court special term of the Supreme Court of the District, yet if the appellee's contention be just, all such suits and judgments thereon were void, and because the United States District Court in special term lacks a jury to try such causes, the United States itself, at its seat of government, is impotent to recover in any action included in paragraphs three or four just mentioned.

Rightly as we think, the Circuit Court of the District has heretofore held that such jurisdiction exercised by district courts of the United States in the States of the Union was in this Federal district conferred upon the Circuit Court's special term of the Supreme Court of the District.

The appellee's reasoning would not only prevent the United States from recovering the penalty provided in the Safety Appliance Acts, within the District of Columbia, but also within the Territories of the United States. As we have said, the Territories have only a supreme court of the Territory and local district courts of the Territory. They have one district court of the United States. There are no district courts of the United States in the Territories in the sense of the Constitution. *McAllister v. United States*, 141 U. S., 174, 182.

The Supreme Court, we think, has applied the reasoning we have endeavored to follow, in the case of *Steamer Coquitlam v. United States*, 163 U. S., 346. That was a suit in admiralty brought by the United States in the District Court of Alaska for the forfeiture of the steamer *Coquitlam* for violation of revenue laws. From a decree in favor of the United States an appeal was prosecuted to the Circuit Court of Appeals for the Ninth Circuit.

By the 6th section of the act of March 3, 1891, ch. 517, the circuit courts of appeals have the power to review the "final decisions in the district court and the acts of the circuit courts in all cases," other than those mentioned in the 5th section of the act, "unless otherwise provided by law." And by the 15th section of the same act it is declared:

"That the circuit court of appeal, in cases in which the judgment of the circuit courts of appeal are made final by this act, shall have the same appellate jurisdiction, by writ of error or appeal, to review the judgments, orders, and decrees of the supreme courts of the several Territories, as by this act they may have to review the judgments, orders and decrees of the district courts and circuit courts; and for that purpose the several Territories shall, by orders of the Supreme Court, to be made from time to

time, be assigned to particular circuits." 26 Stat., 826, 830. In execution of the duty imposed by that section this court, by an order promulgated May 11, 1891, assigned the Territory of Alaska to the ninth judicial circuit.

"The jurisdiction of the Circuit Court of Appeals for the Ninth Circuit to hear and determine this cause was disputed by the United States upon these grounds: 1. That the District Court of Alaska is not a district court within the meaning of the 6th section of the above act of 1891, and was not a district court belonging to that circuit. 2. That the District Court of Alaska is not a supreme court of a Territory within the meaning of that act and the above order or rule of this court."

The Supreme Court met the difficulty by reasoning similar to our own in this case, saying:

"But we are of the opinion that such appellate jurisdiction may be exercised in virtue of the general authority conferred by the fifteenth section of the act of 1891 upon the circuit court of appeals to review the judgments of the supreme court of any Territory assigned to such circuit by this court. That was necessarily so interpreted by this court when, by its order of May 11, 1891, 139 U. S., 707, Alaska was assigned to the ninth circuit. Alaska is one of the Territories of the United States. It was so designated in the order and has always been so regarded. And the court established by the act of 1884 is the court of last resort within the limits of that Territory. No reason can be suggested why a Territory of the United States, in which the court of last resort is called a supreme court, should be assigned to some circuit established by Congress that does not apply with full force to the Territory of Alaska, in which the court of last resort is designated as the District Court of Alaska. *The title of the territorial court is not so material as its character.* Looking at the whole scope of the act of 1891, we do not doubt that Congress contemplated that the final orders and decrees of the courts of last resort in the organized Territories of the United States—by whatever name those courts were designated in legislative enactments—should be reviewed by the proper circuit court of appeals, leaving to this court the assignment of the respective Territories among the existing circuits." *Steamer Coquitlam v. U. S.*, supra, 352.

In a matter of extradition, in a very recent case in the Supreme Court, it was urged that Revised Statutes, section 1014, does not authorize a removal to the District of Columbia, as it is not a district of the United States within the meaning of the law; and the Supreme Court of the District is not a court of the United States as the words are used in that section, and the Supreme Court held that the District of Columbia is a district of the United States, to which a person under indictment for a crime against the United States may be removed for trial within the meaning of section 1014, Rev. Stat. The court said:

"Criticism is made of this act that it only authorizes a removal from the District of Columbia to other districts, but that it does not authorize the removal of persons arrested in some other judicial district to the District of Columbia. But we think that if there were any doubt

upon the subject still remaining it was removed by the new Code of the District of Columbia, taking effect January 1, 1902, wherein it is declared by section 61 that the Supreme Court of the District 'shall possess the same powers and exercise the same jurisdiction as the circuit and district courts of the United States, and shall be deemed a court of the United States;' and by section one (1) of the same Code that 'all general acts of Congress not locally inapplicable in the District of Columbia, and all acts of Congress by their terms applicable to the District of Columbia and to other places under the jurisdiction of the United States, in force at the date of the passage of this act, shall remain in force, except in so far as the same are inconsistent with, or are replaced by, some provision of this Code.'

"In conclusion of this branch of the case it may be said that any construction of the law which would preclude the extradition to the District of Columbia of offenders who are arrested elsewhere would be attended by such abhorrent consequences that nothing but the clearest language would authorize such construction. It certainly could never have been intended that persons guilty of offenses against the laws of the United States should escape punishment simply by crossing the Potomac River, nor upon the other hand that this District should become an Alsatia for the refuge of criminals from every part of the country." *Benson v. Henkel*, 198 U. S., 14, 15.

In conclusion, we believe "the title of the court is not so material as its character," that in this District the special term of the circuit court is the court of the United States having jurisdiction in this locality to hear and determine this suit for the penalty provided by the Safety Appliance Acts for a violation of the provisions of that law committed in the District of Columbia.

The learned court should have overruled the demurrer of the defendant below, the appellee.

The demurrer being overruled, the ruling of the court is reversed and this cause is accordingly remanded to the Supreme Court of the District of Columbia, that the further proceedings in said cause may be had in accordance with this opinion.

Master and Servant—Assumption of Risk.—A servant does not assume the risk incident to an unsafe place to work, where knowledge on his part of the danger is wanting. *Calloway v. Agar Packing Co. (Iowa)*, 104 N. W. Rep., 721.

Master and Servant—Assumption of Risk.—A servant assumes the usual risks of his employment, but not unusual risks, unless he knows or has means of knowing the precise danger. *Hocking v. Windsor Spring Co. (Wis.)*, 104 N. W. Rep., 705.

Partners—What Constitutes.—As between themselves, parties are partners where they intended to combine their property, labor, and skill in an enterprise as principals for the purpose of joint profits. *McDonald Bros. v. Campbell & Bergeson (Minn.)*, 104 N. W. Rep., 760.

# Supreme Court of the District of Columbia.

JOHN B. BOTTINEAU

v.

JAMES M. E. O'GRADY ET AL.

## NON-RESIDENTS; SECURITY FOR COSTS; WAIVER.

1. Where a bill of complaint recites that the complainant is a resident of the State of Minnesota, but temporarily located and for ten years residing in this District, he is to be regarded as a non-resident of this District, within the meaning of sec. 175, Code D. C., requiring non-residents to give security for costs.
2. The fact that the defendants in a suit in equity appear without being served with process is not a waiver of their right to require security for costs; nor is such right waived by the fact of defendants appearing, demurring, and answering before requiring it.
3. Nor is their right to require security for costs defeated by the fact that, upon hearing on demurrer, costs were adjudged against them, which costs have not been paid.

In Equity. No. 25,245. Decided February 20, 1906.

Motion to require complainant to give security for costs. Granted.

*Messrs. Ralston & Siddons* for the complainant.

*Mr. W. H. Robeson* and *Mr. Samuel R. Putman* for the defendants.

Mr. Justice STAFFORD delivered the opinion of the Court:

The defendants moved that the complainant be required to give security for costs under section 175 of the Code, which provides:

"The defendant in any suit instituted by a non-resident of the District of Columbia, or by one who becomes such after the suit is commenced, may, upon notice served on the plaintiff or his attorney, at any time after service of process on the defendant, require the plaintiff to give security for all costs and charges that may be adjudged against him on the final disposition of the cause. But such right of the defendant shall not entitle him to delay in pleading, and his pleading before the giving of such security shall not be deemed a waiver of his right to require such security for costs," etc.

The bill states "that the complainant is a citizen of the United States, and a resident of the State of Minnesota, but temporarily and for ten years residing in the District of Columbia." One of complainant's attorneys has filed his affidavit that he is well acquainted with the complainant, having been his attorney in a number of matters; that the complainant has been living continuously in the District for at least ten years, although still claiming citizenship in the State of Minnesota; that, as complainant has always had the intention of returning to Minnesota at some time, he has called his residence here temporary; that the complainant's wife resided with him in the District for a number of years, dying about two years ago, and that his daughter resides here. The other matters contained in the affidavit are upon information or conjecture. We do not see how this affidavit can be taken as materially changing the statement of complainant himself in his bill that his real and permanent residence is in Minnesota, while his residence in the District is only temporary or for the time being. Being only temporary the length of time it may

have continued can be of no consequence. In *Downs v. Downs*, 23 App. D. C., 381: 32 Wash. Law Rep., 228, the court was dealing with a case in which it became necessary to distinguish between a temporary and a permanent residence. It was held that in suits relating to taxation, right of suffrage, divorce, limitations of actions, etc., the term residence is used in the sense of legal residence; that is, the place of domicile or place of permanent abode as distinguished from the place of temporary residence. We see no reason why a different rule should apply in such cases from that which is to apply under the section we are considering. The legislative intent must have been to furnish that security for costs which does not exist against a party who has nothing in the shape of a permanent residence to hold him here, but is here, if at all, only for temporary reasons and purposes. If one has a legal residence in the District—has a fixed abode, with the intent to remain here permanently or at least indefinitely—it may be fairly presumed that costs will be collectable of him, but if his fixed abode is elsewhere and his presence in the District is temporary in its character, such security is wanting, and in such cases the legislature thought the defendant entitled to something more. We think the complainant must be treated as a non-resident.

The motion is opposed, first on the ground that there was no service of process upon the defendants and that the defendants have no right to move for such security until after they have been served, the language of the section being that the defendant may move "at any time after service of process." In our view this only marks the time, and the fact that the defendants appeared without being served was not a waiver of their right to require security. The motion is also opposed on the ground that the defendants have waived their right to security by appearing, demurring, and answering before requiring it. But the section under consideration is as broad as possible in its terms and declares that the security may be required "at any time after service of process." In view of this language it will not do for the court to read into the section such words as "before he has taken any other step in the case by way of appearance or pleading." Such words would nullify the words of the Code, which are "at any time." Those jurisdictions in which it has been held that appearance, continuance, or pleading will operate as a waiver probably had statutes less broad and explicit in their terms. The motion is also opposed on the ground that when the demurrer to the bill was overruled the defendants themselves were required to pay costs, which they have never done, and that until these are paid they can not be granted this motion. There is nothing upon the record to show the court whether these costs have been paid or not. Even if it were shown that they had not been paid, we do not see how the motion could be denied upon that ground. The law assumes that such costs are collectable against the defendants by reason of their residence here, whereas it assumes that costs are not collectable against non-residents like the complainant.

The motion is granted.

**Wills—Codicils.**

In a proceeding entitled *In re Sigel's Estate*, decided by the Supreme Court of Pennsylvania in October, 1905 (62 Atl., 174), it was held that a will and a codicil must be regarded as parts of one and the same instrument, and the codicil will not be allowed to vary or modify the will unless such was the plain intent of the testator.

It appeared that the testator, after making several legacies, gave the residue of his estate to his heirs, and on the same day executed a codicil giving a certain sum to three persons, who were his heirs, "and no more." It was held that the three heirs were not excluded by the words "no more" from sharing in the balance of the estate; but such words applied only to the amounts mentioned in the codicil. The court said in part:

"The fundamental distinction between the nature of a codicil and a later will should be borne in mind. The latter will work essentially a revocation, while the codicil is a confirmation, except as to the express alterations which it may contain; and, therefore, while, in the case of a later will, a revocation may be presumed, this is not true of a codicil. It means, rather, an addition than a revocation.

"While no case has been found which furnishes an exact precedent for the one now before us, yet we think in principle it is to be governed by the authorities which hold that a gift once made by will is not to be cut down by a subcodicil, unless the intention of the testator to that effect appears clearly or by necessary implication. Where it is possible to construe the codicil so as to give effect to all the provisions of the will, it certainly should be done. We do not think that it can be said in this case that the intention of the testator to revoke the gifts of proportionate shares in the residue, made to the heirs named in the codicil, is clear from the use of the words 'and no more;' for these may be construed to apply equally well as limiting the amount of the additional gifts to the sums named in the codicil.

"In *Brisben's appeal*, reported in 1 Lane. Bar., October 9, 1869, this court, speaking through Read, J., said: 'It would appear to be perfectly reasonable that where a legacy is given by will to a particular individual, and by a codicil another legacy is given to the same person, the second should be considered as additional to the first, and, therefore, where a paper is codicillary, and two legacies are given to the same person, they are cumulative. The more recent decisions treat this as conclusive, unless a contrary purpose is distinctly manifested by the instruments themselves.' In the present case this general principle would unquestionably make the gifts to the individuals named in the codicil cumulative were it not for the words 'and no more.'

"The doubt raised by them is as to whether they limit the words of the will and defeat the right to share in the residue. Or do they limit only additional gifts? We are inclined to the latter construction, under the accepted principle that, where a devise is made of an estate, a revocation will not be implied unless no other construction can be placed upon the language. In this case we think the construction adopted by the court below, which saves the right to

share in the residue, is reasonable and fair. If the codicil be read into the will, it would then read 'and the balance of my estate to the heirs of Charles Sigel, and, in addition, to the persons named in the codicil the amounts therein named, and no more;' that is, in addition to their proportionate share of the residue as heirs, under the language of the will they get, respectively, the amount named, 'and no more.'"—*Albany Law Journal*.

**Indemnifying Bond—Business—Damages.**

The Kentucky Court of Appeals held, in the case of *Manning v. Grinstead*, that in an action on an indemnifying bond for damages for the wrongful seizure and detention of the owner's goods, he is not only entitled to have his goods restored to him in the same condition as when taken, but where the property is usable and its use has a value he should be compensated for the time he was deprived of its use, and that when the natural and direct result of a tort is the interruption of or injury to an established business, profits lost during the period of enforced suspension ought to be recovered from the wrongdoer; but that damages for injury to one's future business or his credit are not recoverable. The court further held that in such an action as that above referred to, where the owner of the goods seized had to execute a claimant's forthcoming bond in obtaining a release of the levy on which he paid the surety company a fee, this was an incident necessarily imposed by the wrongful seizure for which the owner ought to recover.

**Bill of Lading; Negotiability.**

The Maryland Court of Appeals held, in the case of *The Merchants' National Bank of Baltimore v. Chesapeake Steamship Company of Baltimore*, that by the common law a bill of lading is quasi negotiable only, and where the words "not negotiable" are stamped or printed across the face of the bill, they result in the total destruction of negotiability; that it is the duty of a carrier issuing an "order" bill of lading to require the surrender of the bill before making a delivery of the property, and if the carrier is guilty of negligence in not enforcing this requirement, and such negligence is the proximate cause of injury to one innocently dealing with the property, such negligence will furnish a valid ground for a recovery in damages, but that where the carrier delivers property represented by a "non-negotiable" order bill of lading to a rightful holder of the bill of lading without requiring the surrender of the bill, and such holder thereafter fraudulently alters the date of the bill and transfers it for value, the proximate cause of the loss is the crime of the transferrer and not the negligence of the carrier, and no recovery can be had thereon as against the carrier. The court further held that the alteration of the date in a bill of lading is a material alteration and avoids the instrument.

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**Legal Notices.**

**Millan & Smith, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of James B. D. Meeds, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of March, 1906. BENJAMIN N. MEEDS, 1010 Pa. ave. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,525. Administration. [Seal.] 10-St

**E. H. Thomas, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Reuben B. Dietrick, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 26th day of March, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 7th day of March, 1906. GEO. W. F. SWARTZELL, by E. H. Thomas, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,549. Administration. [Seal.] 10-St

**H. T. Taggart, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Bridged Wardell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of March, 1906. PETER J. MCINTYRE, 2534 K St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,538. Administration. [Seal.] 10-St

**E. F. Colliaday, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Anna Page Brown v. William H. Brown and**  
**Eliza Jones. No. 28,050. Equity Docket No. 58.**

The object of this suit is to obtain an absolute divorce upon the ground of adultery. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and in The Washington Times. On motion of the complainant, it is this 9th day of March, A. D. 1906, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the

[Seal] first publication of this order; otherwise the cause will be proceeded with as in case of default. By the Court: HARRY M. CLABAUGH, Chief Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 10-St

**Hughes & Gray, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Addie Jett White v. Arthur White.**  
**No. 25,992. Equity Docket No. 57.**

The object of this suit is to obtain an absolute divorce on the ground of adultery. On motion of the complainant, it is, this 8th day of March, A. D. 1906, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington

[Seal] Law Reporter and The Washington Bee once a week for three successive weeks. By the court: HARRY M. CLABAUGH, Chief Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 10-St

**Legal Notices.**

**John B. Larnar, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Eliza M. Higley, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Thursday, the 29th day of March, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 8th day of March, 1906. THE WASHINGTON LOAN AND TRUST CO., by Andrew Parker, Treasurer, by John B. Larnar, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,771. Administration. [Seal.] 10-St

**Hamilton & Colbert, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**  
**Estate of Frances A. Pleasants, Deceased.**  
**No. 13,170. Administration.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by Anne E. Pleasants, it is ordered this 6th day of March, A. D. 1906, that notice be and hereby is given to Annie Pleasants, and to all others concerned, to appear in said court on Monday, the 9th day of April, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 10-St

**S. Herbert Giesy and Thomas James Meagher,**  
**Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the State of Pennsylvania and the District of Columbia, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William Hogan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 7th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 7th day of March, 1906. LYNN DORRIS LUCUS, 4315 Walnut St., Philadelphia, Pa.; HARRY C. BIRGE, 1233 N. Y. ave., Wash., D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,733. Administration. [Seal.] 10-St

**Ellen Spencer Mussey, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**  
**Estate of Mary Emily Bates Cones, Deceased.**  
**No. 13,514. Administration.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by The American Security and Trust Company and Ellen Spencer Mussey, it is ordered, this 6th day of March, A. D. 1906, that notice be and hereby is given to Henry S. Bennett, a non-resident, and to all others concerned, to appear in said court on Monday, the 9th day of April, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 10-St

**Legal Notices****Wm. Henry Dennis, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the States of New York, Massachusetts, and Rhode Island, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Herbert G. Ogden, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 1st day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 1st day of March, 1906. HERBERT G. OGDEN, Jr., 141 Broadway, New York; WARREN G. OGDEN, Quincy, Mass.; N. DARRELL HARVEY, 262 Benefit st., Providence, R. I. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,527. Administration. [Seal.] 10-3t

**Wm. L. Browning, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Louisa S. Swasey, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of March, 1906. WILLIAM L. BROWNING, 416 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. 13,520. Administration. [Seal.] 10-3t

**Halston & Siddons, Attorneys****Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of William H. Wetzel, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of March, 1906. WILHELMINA C. WETZEL, 2136 H st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,523. Administration. [Seal.] 10-3t

**J. Vincent Coughlan, Attorney****Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of James Mulloy, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of March, 1906. JAMES W. MCCHESNEY, 200 E st. N.E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,480. Administration. [Seal.] 10-3t

**Lambert & Baker, Attorneys****Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia and the State of Pennsylvania, respectively, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Margaret Love Skerrett, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers on or before the 6th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 6th day of March, 1906. DAVID MILNE, School Lane, Germantown, Philadelphia, Pa.; FREDERICK WILLIAM MATTE-SON, 1706 P st. N. W., Wash., D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,337. Administration. [Seal.] 10-3t

**Legal Notices.****In the Supreme Court of the District of Columbia,**  
**Holding a Special Term as a District Court of the**  
**United States for the District of Columbia.**

In the Matter of the Condemnation of All of Original Lots One, Two, and Three, the South Forty-four Feet of Original Lot Four, the South Twenty Feet of Original Lot Five, and All of Subdivision Lot Fourteen, in Square Numbered Three Hundred and Twenty-four, in the City of Washington, District of Columbia, as a Portion of the Site for the Proposed Addition to the Post-office Building. No. 679.

Upon consideration of the petition filed herein by the United States of America, through William H. Moody, its Attorney-General, seeking the condemnation of all of original lots one, two, and three, the south forty-four feet of original lot four, the south twenty feet of original lot five, and all of subdivision lot fourteen, in square numbered three hundred and twenty-four, in the city of Washington, District of Columbia, as a portion of the site for the proposed addition to the post-office building, in conformity with the act of Congress approved March 3, 1903, entitled, "An act to increase the limit of cost of certain public buildings, to authorize the purchase of sites for public buildings, to authorize the erection and completion of public buildings, and for other purposes" (32 Statutes at Large, part 1, page 1211), it is by the court, this 26th day of February, A. D. 1906, ordered that Michael Gatti, Rosa C. Gatti, Etta Ball, Maria Hawkins, Stephen Gatti, Angela Gatti, Kate Mulligan, Sadie A. McKean, Vera Hastings, Martha Raper, Daniel I. Broderick, Edward Mullin, E. Cecilia Hanna, Anna R. Forney, Edward O. Wagner, Harry M. Wagner, and August Wagner, partners, trading as H. M. Wagner & Co.; F. W. Bolgiano, trading as F. W. Bolgiano & Co.; Lorenzo Costa, Theresa Costa, Mary Armstead, Saint Vincent's Orphan Asylum, a corporation; Louis Ludwig, Dorothy Karr Hanvey, infant; Walter H. Acker, guardian of Dorothy Karr Hanvey, infant; Emma K. Hanvey, Charles White, and William W. Vaughan, and all other persons owning, occupying, or claiming any title, interest, or lien in or upon any of the said parcels of property above described and sought to be condemned herein, be, and they hereby are, required to appear in this court and answer the exigencies of the said petition on or before the 2d day of April, A. D. 1906, at 10 o'clock A. M., at which time the court will proceed with the matter of the condemnation of the above-described parcels of property. By the court: JOB EARNARD, Associate Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 10-2t

**Alfred D. Smith, Attorney****In the Supreme Court of the District of Columbia.**  
**Ellis M. Reh v. John L. Reh et al.**  
**No. 24,741. Equity Docket No. 55.**

The object of this suit is to obtain absolute divorce on the ground of adultery. On motion of the complainant, it is, this 6th day of February, A. D. 1906, ordered that the defendants, Florence Mardiner and John L. Reh, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Providing a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Times. [Seal] By the court: HARRY M. CLABAUGH, Chief Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 10-3t

**Coldren & Fenning, Attorneys****In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**In re Estate of James Frame, Deceased.**  
**Adm. No. 12,685.**

William Hamilton, executor of James Frame, deceased, having reported to the court the sale of the real estate known as lot lettered A, in square number 725, in the city of Washington, District of Columbia, the same being improved by the house known as No. 129 C street, northeast, in said city, of which said decedent was seized and possessed at the time of his death, unto Walter I. Lembkey, for the sum of \$3,500.00 net cash, it is this 5th day of March, 1906, ordered, that said sale be ratified and confirmed unless cause to the contrary be shown to this court, on or before the 9th day of April, 1906; provided, that a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said last mentioned date. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. 10-3t



**Legal Notices.**

**George E. Flemming, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**No. 12,825. Administration.**

This is to Give Notice That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Caroline Day, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Friday, the 6th day of April, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 6th day of March, 1906.

[Seal] **UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA**, by **George E. Flemming, Attorney**. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 10-31

**P. H. Marshall, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Henry B. Hutchinson v. Israel Little et al.**  
**Equity No. 28,056.**

The object of this suit is to establish the title of complainant, Henry B. Hutchinson, in fee simple, by the adverse possession of himself and those under whom he claims, to original lot numbered twenty-six (26), in square numbered nine hundred and fifty (950), in the city of Washington, District of Columbia. On motion of the complainant, by his solicitor, P. H. Marshall, it is, by the court, this 7th day of March, A. D. 1906, ordered that the defendants, Israel Little, if he be living, and the unknown heirs, devisees, and assignees of Israel Little, if he be dead, cause their appearance to be entered herein on or before the first rule day occurring three months after the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order to be published for three months, once a week for three successive weeks for the first month, and twice a month for each of the two succeeding months in The Washington Law Reporter and The Washington Times. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. mar. 9-16-23, apr. 13-20, may 11-18

[Seal] **Leon Tobriner and Byron U. Graham, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Isador Neuberger, Trustee, v. Charles W. Dant et al.**  
**No. 25,858. Equity.**

The object of this suit is to perfect complainant's title to part of lot lettered "G" in Benjamin Pollard's subdivision of part of square numbered five hundred and seventy (570) as per plat recorded in Liber N. K., folio 177, of the records of the office of the surveyor of the District of Columbia, described as follows: Beginning for the same on "D" street at the southwest corner of said lot, and running thence east on said street seventeen (17) feet six (6) inches; thence north one hundred and twenty (120) feet to a public alley fifteen (15) feet wide; thence west on said alley seventeen (17) feet six (6) inches to the northwest corner of said lot; and thence south one hundred and twenty (120) feet to the place of beginning. On motion of the complainant, by his solicitors, Leon Tobriner and Byron U. Graham, it is this seventh (7) day of March, A. D. 1906, ordered that the defendants, Annie Middleton, Edith LeFreux, Fannie Mullen, George Dant, Allan Dant, Victor Dant, Frances F. Hurley, George J. Hurley, and William B. Hurley, cause their appearance to be entered herein on or before the fortieth (40th) day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs, assignees, and devisees of Richard T. Queen, cause their appearance to be entered herein on or before the first rule day occurring three months after the publication of this order; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks prior to said first return day and twice a month for three successive months prior to said later return day (the last publication to include one of the former publications) in The Washington Law Reporter and The Washington Times. By the court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. mar 9-16-23-30; apr 20-27; may 13-25-1906

[Seal] **Washington Law Reporter and The Washington Times**. By the court: **HARRY M. CLABAUGH**, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. mar 9-16-23-30; apr 20-27; may 13-25-1906

**Legal Notices.****THIRD INSERTION.**

**L. Cabell Williamson, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Jennie Gray, Complainant, v. Juliette Moore McKey et al., Defendants.** Equity No. 24,950.

The object of this suit is to obtain partition of lot 77 in John C. Harkness et al., Commissioners' subdivision of square 510 in the city of Washington, District of Columbia. On motion of the complainant by her solicitor, L. Cabell Williamson, it is, this 1st day of March, A. D. 1906, ordered that the defendant, William J. Gray, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order to be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post. By the court: **HARRY M. CLABAUGH**, Chief Justice. Copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 9-31

[Seal] **Washington Law Reporter and The Washington Post**. By the court: **HARRY M. CLABAUGH**, Chief Justice. Copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 9-31

**Wm. Henry Dennis, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Helen V. Gates, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscriber, on or before the 1st day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand, this 1st day of March, 1906. **WM. HENRY DENNIS**, Columbia Law Building. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,429. Administration. [Seal.] 9-31

**Jos. L. Tepper, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Michael J. Nolan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of February, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of February, 1906. **ANNIE C. BAKER**, 628 3d st. S. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,477. Administration. [Seal.] 9-31

**Henry V. Tulloch, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, who were by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Elizabeth Del Ames, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 19th day of March, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 21st day of February, 1906. **JOHN GRIFFITH AMES, BEN AMES, and JOHN GRIFFITH AMES, JR.**, by **HENRY V. TULLOCH**, attorney. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,562. Administration. [Seal.] 9-31

New corporations can procure from the Law Reporter Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated, numbered, and bound.



**Legal Notices.**

**F. S. Bright, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters of administration on the estate of James C. Sprigg, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 19th day of March, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 1st day of March, 1906. **WILLIAM M. SPRIGG**, by **F. S. Bright, Attorney**. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,486. Administration. [Seal.] 9-3t

**Rudolph B. Behrend, Attorney**  
**In the Supreme Court of the District of Columbia.**  
**In re Estate of J. K. Wilhelmina Kirchner, Deceased.**  
**ORDER.**

The executors of the above-named decedent having reported that they have sold premises No. 811 R street N. W., in the city of Washington, District of Columbia, being lot 6 in square 895, to George M. Slye, for \$1,650, net, and all cash, it is, by the court, this first day of March, A. D. 1906, ordered, that said sale be, and the same hereby is, ratified and confirmed, unless cause to the contrary be shown on or before the 2d day of April, A. D. 1906; provided a copy of this order be published in *The Washington Law Reporter* once a week for each of three (3) consecutive weeks before said [Seal] last named day. **WENDELL P. STAFFORD**, Justice. A true copy. Attest: **James Tanner**, Register of Wills. 9-3t

**Berry & Minor, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Frank Duncan Jaudan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 21st day of February, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of February, 1906. **WALTER V. R. BERRY**, Colorado Building. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,376. Administration. [Seal.] 9-3t

[Filed February 26, 1906. J. R. Young, Clerk.]

**James H. Taylor, Solicitor**

**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**Wood et al. v. Wood et al.**  
**No. 7740. Equity Dec. 21.**

Upon consideration of the report of James H. Taylor and Henry A. Wise, trustees, it is, this 26th day of February, 1906, ordered that the said trustees be, and they are hereby, authorized and directed to accept the offer of Allan L. McDermott to purchase for the sum of twenty-nine thousand (\$29,000) dollars lot numbered thirty-seven (37) and that part of lot numbered thirty-eight (38) comprised within the following metes and bounds: Beginning for the same at the southeast corner of said lot numbered thirty-eight (38) and running thence west along the line of the public alley in said square twenty (20) feet; thence north twenty-eight (28) feet; thence east twenty (20) feet, and thence south twenty-eight (28) feet to the place of beginning, in Samuel P. Brown's subdivision of lots in square numbered two hundred and twenty (220), in the city of Washington, in the District of Columbia, being a portion of the property decreed to be sold in the above entitled cause; and further, that the said sale be ratified and confirmed as reported, unless cause to the contrary be shown on or before 26th day of March, 1906. Provided a copy of this order be published in *The Washington Law Reporter* and in *The Evening Star* once a week for three consecutive weeks before the [Seal] said day. **WENDELL P. STAFFORD**, Justice. A true copy. Test: **J. R. Young**, Clerk, by **J. W. Latimer**, Asst. Clerk. 9-3t

**Legal Notices.**

**John B. Larner, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Dorsey E. W. Towson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 29th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 26th day of February, 1906. **BLANCHE K. TOWSON**, **THE WASHINGTON LOAN AND TRUST CO.**, by **Andrew Parker**, Treasurer. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,427. Administration. [Seal.] 9-3t

**Win. E. Ambrose, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of John W. Bradbury, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 27th day of February, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of February, 1906. **WILLIAM E. AMBROSE**, 468 La. ave. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,511. Administration. [Seal.] 9-3t

**Herbert L. Franc, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of De Haven Sharp, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of February, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of February, 1906. **SARAH E. SHARP**, 617 C st. N. E. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,512. Administration. [Seal.] 9-3t

**William B. Reilly, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the State of Pennsylvania, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of John E. Hammond, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of February, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of February, 1906. **JOHN G. KROHR**, 422 Walnut st., Phila. Pa. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,382. Administration. [Seal.] 9-3t

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Louis D. Wine, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 19th day of March, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person, or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 26th day of February, 1906. **CLARENCE B. RHEEM**, Administrator. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,725. Administration. [Seal.] 9-3t

**Legal Notices.****A. S. Worthington, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration, c. t. a., on the estate of Horace L. Piper, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of February, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of February, 1906. **TRYPHENAS PIPER**, 1506 L st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,463. Administration. [Seal.] 9-3t

**W. E. Ambrose and E. Van Dyke, Solicitors**

In the Supreme Court of the District of Columbia.  
**Katherine H. Connolly, Complainant, v. Anthony A. Connolly, Defendant, Nellie King, Katie McClelland, Dollie Johnston, and Alice Green, Co-defendants. No. 25,985.**

The object of this suit is to obtain a divorce from the bonds of marriage now existing between the complainant and the defendant, Anthony A. Connolly, based upon acts of adultery committed by the defendant, Anthony A. Connolly, with the co-defendants above named. Provided, a copy of this order be published once a week for three consecutive weeks in The Washington Law Reporter and The Washington Post. On motion of the complainant, it is, this 27th day of February, A. D. 1906, ordered that the defendant, Anthony A. Connolly, and the co-defendants, Katie McClelland and Dollie Johnston, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the Court: **HARRY M. CLA-**

[Seal] **BAUGH**, Chief Justice. A true copy. Test: **J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk.** 9-3t

**A. E. Shoemaker, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Lemuel P. Burriss, Deceased.  
No. 13,494. Administration.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Albert E. Shoemaker, it is ordered, this 1st day of March, A. D. 1906, that notice be and hereby is given to **James Burriss, William Burriss, George Burriss, Benjamin Burriss, Mrs. G. H. Trall, Mary E. Hewitt, Edward Burriss, and John Burriss**, and any unknown heirs at law of deceased, and to all others concerned, to appear in said court on Monday, the 2d day of April, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return

[Seal] day. **WENDELL P. STAFFORD**, Justice. Attest: **James Tanner**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 9-3t

**Alexander H. Bell, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Daniel McNamara, Deceased.  
No. 13,483. Administration.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by Mary C. McNamara, it is ordered this first day of March, A. D. 1906, that notice be and hereby is given to **Johanna McNamara, Mary McNamara, John McNamara, and Johanna McNamara Dorgan**, and to all others concerned, to appear in said court on Monday, the 2d day of April, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein

[Seal] mentioned, the first publication to be not less than thirty days before said return day. **WENDELL P. STAFFORD**, Justice. Attest: **James Tanner**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 9-3t

**Legal Notices.****R. H. McNeill, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Jesse Holt**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of March, 1906. **GEO. W. BRYAN**, 1805 H st. N. E. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,519. Administration. [Seal.] 9-3t

**Irwin B. Linton, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Laura C. Dodge**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of February, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of February, 1906. **WILLIAM H. SAUNDERS**, 1407 F st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,261. Administration. [Seal.] 9-3t

**George H. Lamar, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Herbert B. Blair**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of February, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of February, 1906. **LAURA CONSTANCE BLAIR**, 8125 Mt. Pleasant st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,397. Administration. [Seal.] 9-3t

**SEVENTH INSERTION.**Filed January 9, 1906, **J. R. Young, Clerk.****W. H. Linkins, Solicitor****In the Supreme Court of the District of Columbia,  
Holding an Equity Court.****Patrick O'Toole v. George Thompson et als.**

In Equity, No. 25,908.

The object of this suit is to perfect complainant's title to original lot 16, square eighty-eight (88), in the city of Washington, District of Columbia. On motion of the complainant, by his solicitor, **William H. Linkins**, it is, this 9th day of January, A. D. 1906, ordered that the defendants, **George Thompson, Samuel Smoot, William Thompson, trustee, James Wilson, and Thomas Wilson**, and the unknown heirs, devisees, grantees, and alienees, both immediate and mediate, and the unknown heirs of such devisees, grantees, or alienees, or persons claiming under, by, or through any parties who might be so described, of all said above-named parties, and also of **Andrew Sullivan**, deceased, and the grantees or alienees of **Ann Clephane**, deceased, either immediate or mediate, or the heirs of such grantees or alienees, or any parties who claim under, by, or through any parties who might be so described, cause their appearance to be entered herein on or before the first rule day occurring three months after the first publication of this order; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published in Washington Law Reporter and The Washington Times for three successive months prior to said return day and in the following manner, once a week for three successive weeks during the first month and twice a month during each of the two succeeding months.

[Seal] By the court. **THOS. H. ANDERSON**, Justice. A true copy. Test: **J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk.**

Jan. 12, 19, 26; Feb. 16, 23; Mar. 9, 16

# The Washington Law Reporter

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### Corporations—Action by Minority Stockholders Against Officers.

In *Jacobson v. Brooklyn Lumber Company et al.*, decided February 27, 1906, by the Court of Appeals of New York, and reported in the New York Law Journal, the action was brought by a stockholder in a corporation against the officers thereof to recover for it the amounts received by the defendants for excessive salaries. It was admitted by the pleadings that the defendants owned a majority of the stock and constituted a majority of the board of directors; that they had voted to themselves from year to year largely increased salaries, a part of which was to be paid in the future when the business of the company would afford it, and in that connection had credited themselves with an amount equal to 50 per cent of the total assets of the company. In reversing a judgment of the court below dismissing the complaint several points are determined by the Court of Appeals. It was held that a demand upon a corporation to bring an action to redress a wrong charged against its officers is unnecessary when the individual defendants against whom the wrong is charged are its executive officers and constitute a majority of its acting board of directors. It is neither a defense nor a mitigating circumstance to a charge of wrongful acts against the officers of a corporation that, during the time the alleged wrong was going on, its stock increased in value and it was prosperous. The relation of an officer to the company is declared by the court to be fiduciary, and he must at all times act in good faith and unselfishly towards

it. He can not as an officer make an agreement with himself as an individual for his own benefit; nor can he with propriety vote in the board of directors upon a matter affecting his own private interests. It is further held that the amount paid by a company for salaries, under the circumstances of the case before the court, can not be intentionally so gauged as to absorb practically all the profits of the company that have accrued or that it may at some future time be able to pay.

### Carriers of Goods—Failure of Consignee to Remove Perishable Goods After Notice.

In *Becker v. Pennsylvania Railroad Company*, recently decided by the appellate division of the Supreme Court of New York, it is held that, after the lapse of a reasonable time for the consignee to remove the goods after he has been given notice of their arrival at their destination, the liability of the common carrier as such ceases, and thereafter its liability, if any, is that of a warehouseman. Specifically, it was held that a carrier was not negligent in failing to unload semi-perishable evaporated apples after notifying the consignee of their arrival at destination, in the absence of evidence tending to show that it knew, or in the exercise of reasonable diligence should have known, that the apples would have been in better condition if unloaded.

### Vendor and Purchaser—Conveyance of Perfect Title—Building Restrictions.

In *Whelan v. Rosseter*, decided by the Supreme Court of California (82 Pac., 1082), it is held that a purchaser of land under a contract calling for a perfect title is entitled to a title fairly deducible of record, free from reasonable doubt and litigation. Building restrictions in grants of real estate are held to be incumbrances on the title. In the case on hearing, the vendor contracted to sell real estate, the purchaser being given fifteen days to examine the title, and if found defective he was to state his objections in writing, and the vendor was to have a reasonable time to perfect title. The abstract showed building restrictions on the land, with a suit pending to determine their validity. It was held that the purchaser was entitled to rescind and to recover the part of the price paid; the title being doubtful, even though the covenant did not run with the land, since equity might enforce them. It was also held that a purchaser of real estate is not required to make investigations as to facts that may affect the title not disclosed by the abstract furnished under the contract by the vendor or actually known by the purchaser.

# Court of Appeals of the District of Columbia.

**SAMUEL GASSENHEIMER, PLAINTIFF IN ERROR,**

**v.**

**DISTRICT OF COLUMBIA.**

**POLICE REGULATIONS; AUTOMOBILES; LOITERING IN STREETS.**

1. Automobiles used for hire and for which their owners have public hack licenses are vehicles within the meaning of section 7, article 10, of the Police Regulations, prohibiting vehicles for hire from loitering on the streets except at public cab stands.
2. Where, in a prosecution for violation of such regulation, the uncontradicted evidence showed that the automobiles stood in front of a hotel, at a place not a public cab stand, displaying placards indicating that they were for hire by the general public; that they were owned by defendant, who was not in any way interested in the hotel, though he maintained an agent there who was authorized to make contracts with guests and to telephone for vehicles for their use; and that in two instances testified to the vehicles were hired to persons not guests of the hotel, and the fares were fixed and collected by the drivers, held that the evidence was sufficient to warrant the conviction of defendant; distinguishing *Gassenheimer v. D. C.*, 83 Wash. Law Rep., 197, and *Willard Hotel Co. v. D. C.*, 82 id., 168.

No. 1610. Decided January 17, 1906.

**IN ERROR to the Police Court of the District of Columbia. Affirmed.**

*Mr. D. W. Baker, Mr. M. F. Mangan, and Mr. F. J. Hogan* for the plaintiff in error.

*Mr. E. H. Thomas and Mr. James F. Smith* for the defendant in error.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

An information in the Police Court charged that Samuel Gassenheimer, on August 24, 1905, in the District of Columbia, on Pennsylvania avenue northwest, being the owner of a certain licensed hack, did then and there, and on divers other dates since the date aforesaid, cause the same to occupy a stand, while unemployed, other than one designated by the Commissioners of the District as a public hack stand. He was adjudged guilty, and has been granted a writ of error to review the judgment.

The regulation which he was charged with violating is found in section 7 of article 10, and reads as follows:

"Sec. 7. Vehicles for hire seeking employment shall not stop or loiter upon any street except at the regular public stands, nor shall the driver of any such vehicle solicit passengers upon the streets, avenues, or public grounds."

The evidence on behalf of the prosecution tended to show that, on August 24, 1905, defendant Gassenheimer was the owner of a number of automobiles engaged in carrying passengers for hire. That on said date as many as four of said automobiles were seen standing in the street in front of the Columbia Hotel, at 1413 Pennsylvania avenue N. W., which is not a public stand. That said automobiles displayed placards with the words "automobiles to hire" thereon. That on said day, while but one automobile was in front of said hotel, a member of the police force and one Saunders approached the driver. That Saunders asked the driver if the automobile

was engaged, to which he replied "no." That they told the driver they wanted to drive around town, got in and were driven for one hour, and paid the driver \$3 for the carriage. That on another occasion four automobiles belonging to the defendant had been seen standing in front of said hotel for 10 or 15 minutes. That one of the drivers was asked if he was engaged and his answer was, "Do you want to take a ride?" That the policeman, who was not in uniform, and another person entered the vehicle and were driven down said avenue to Twenty-fifth street, paying 75 cents to the driver therefor. Other evidence tended to show that persons passing on the street had been seen to enter defendant's vehicles at the same point and take rides in them. That some of these may have come out of the hotel, but the majority did not.

Defendant, on his own behalf, testified that he rents and maintains an office in said hotel and has automobiles in front thereof for hire to guests. That he does not run his automobiles himself, but has men hired for the purpose. That automobiles are sent to the hotel upon telephone calls for the same. That he sends them to the hotel just as automobiles and carriages are sent to the Raleigh and other hotels. On cross-examination, he said that he owned the automobiles and had public hack licenses for the same, but did not own the hotel and was not interested in the business.

1. There can be no doubt that automobiles used for hire and for which their owners have public hack licenses are vehicles within the meaning of section 7 of the regulations aforesaid. Moreover, section 1 of Article IV, which designates the public hack stands, provides that every licensed vehicle for the conveyance of passengers shall be considered a hack within the meaning and intent of the regulations. The information, therefore, correctly described the vehicle as a public hack.

2. The contention of the plaintiff in error that the facts in evidence bring the case within the principle of the recent cases of *Gassenheimer v. D. C.* (25 App. D. C., 179; 33 Wash. Law Rep., 197, and *Willard Hotel Co. v. D. C.*, 23 App. D. C., 272; 32 Wash. Law Rep., 163) is untenable.

The complaint in the first of those cases was for obstructing the public streets, in violation of another regulation. The defendant owned the hotel before which the vehicle stood, and while there was evidence tending to show that it was kept there for hire to the public, it had no relevancy to the offense charged. As was said by Mr. Justice Duell, who delivered the opinion of the court: "There was absolutely no affirmative testimony whatever to show that traffic was delayed or hindered to the slightest degree by reason thereof. The information was not based upon the allegation that a public cab stand was maintained in an unauthorized place. . . . We do not now pass upon the right of a stableman to keep his vehicle standing in the street in front of his office ready for hire."

In the *Willard Hotel* case the prosecution was under section 7, but the facts were essentially different. It was shown that the hotel company had hacks under lease from a licensed stable keeper, which stood in the street in front of the

hotel, but these were kept exclusively for the use of guests of the hotel. It was further shown that the driver of one of these hacks, when asked what he was doing there, said he knew it was not a public stand, but that he was there subject to call for the carriage of guests of the hotel only. It was further shown that all engagements were made in the hotel office; that none but guests were supplied; and that the charges were never fixed or collected by the drivers, but were entered against the guests using them and collected with their other charges.

It was held that under the lease the hacks were, for the time being, the property of the hotel company, and that it had the right to keep them in front of its premises for such use, provided that in so doing it did not violate the regulation against obstructing a public street. After stating this conclusion, Mr. Justice Morris, who delivered the opinion of the court, took occasion to say: "A very different question might be presented if the hotel company, instead of restricting the use of its vehicles to the guests of the hotel, stationed them upon the street for hire to any and all persons who might desire to use them. Then there would undoubtedly be the maintenance of a public cab stand in an unauthorized place and an unwarranted use of the public highway for purposes forbidden by the municipal ordinances. But no such question is presented here, for the testimony is to the effect that the hotel company rigidly restricts the use of its vehicles to the guests of the house."

In the case at bar the uncontradicted evidence showed that the vehicles stood in front of the hotel, at a place not a public stand, displaying placards indicating that they were for hire by the general public. In the two instances of use they were hired to persons not guests of the abutting hotel, and the drivers fixed and collected the fares.

This made a prima facie case sufficient to warrant the conviction of the offense charged.

The defendant admitted that he was not the proprietor of the hotel and had no interest in its business.

The vehicles were not under lease to the hotel proprietor, who, in that event, might have been responsible for their hiring to persons not his guests, if informed of the practice. The mere fact that the defendant may have had an agent in the hotel authorized to make contracts with guests and to telephone for vehicles for their use, is not necessarily inconsistent with the fact that other vehicles may have been sent for and kept at the same place for hire to the general public.

Going no farther than stated, this evidence does not make it necessary to determine the question, whether an owner of licensed vehicles who, in good faith and by arrangement with the proprietor, maintains an office or agency in a hotel for the purpose of furnishing vehicles to its guests, has the same right as the proprietor to keep a reasonable number of vehicles in the adjacent street, subject to call for that purpose exclusively.

Assuming these rights to be identical, though there may be an essential distinction, yet, in either case, it must appear that the arrange-

ment has been made in good faith for the use of guests of the hotel, and is not a pretext for the maintenance of a stand to secure the patronage of the general public, as well, in violation of the regulation.

Nor is it necessary to rest the conviction upon the legal responsibility, merely, of the defendant for the acts of his agents under the principle enunciated in *Lehman v. D. C.* (19 App. D. C., 217, 234: 30 Wash. Law Rep., 87), which was a prosecution under the law regulating sales of liquors, opening of saloons, etc.

The offense charged was not the solicitation of passengers by the defendant's drivers, or their carriage of other than hotel guests for hire. These acts were among the circumstances from which the unlawful intent of the defendant in sending his automobiles to stand in the street in front of the hotel might be inferred.

As owner and licensee he permitted the vehicles to stand in the street, and we can not say that the evidence was insufficient in law to warrant the court in finding that he knew of, profited by, and encouraged the violation of the law. *Trometer v. D. C.*, 24 App. D. C., 242, 248: 32 Wash. Law Rep., 763. That the drivers may also have been amenable can not have the effect to relieve him of his criminal responsibility.

3. It is further contended that the regulation imposes no duty upon any person other than the drivers of vehicles, and that only in respect of soliciting passengers when stopping or loitering upon the streets. The regulation might have been more aptly worded in order to accomplish its purpose, but we think it sufficient. By a separate section the violation of any one of the regulations is made punishable, and, while the stoppage or loitering of the vehicle is prohibited by the regulation, the act is necessarily that of its owner, or driver, or both.

Finding no error in the proceedings in the Police Court, the judgment will be affirmed. It is so ordered.

Affirmed.

**Bankruptcy Claims—Arrangement With Corporation Taking Over Bankrupt's Assets and Business—When Not a Payment or Liquidation of Claim.**—Where a corporation organized to take over the assets of a cigar manufacturer who had been adjudicated a bankrupt, and continue the business, suggests to a company which had been the agent of the bankrupt for the sale of cigars, and whose services as a customer or agent it was anxious to retain, that it authorize the corporation's attorney to collect a claim filed by it for certain cigars and the claimant replies that it would hand its account to the receivers in bankruptcy, would expect to receive the cigars and would return to the corporation any dividend received upon its claim from the receiver, the arrangement can not be regarded as a liquidation of the claim, and the bankrupt estate should not be relieved from its payment. *Haas-Baruck & Co. v. Portuondo*, 15 Am. B. R., 130.

**Landlord and Tenant—Liability as to Third persons.**—Tenant and not landlord held liable for injuries caused by defects in sidewalk. *Lindstrom v. Pennsylvania Co. for Ins. on Lives and Granting Annuities (Pa.)*, 61 Atl. Rep., 940.

# Court of Appeals of the District of Columbia.

JAMES H. HARRIS, WARDEN, ETC.,  
APPELLANT,

v.

ROBERT LANG.

## POLICE COURT; CUMULATIVE SENTENCES; SEPARATE SENTENCES FOR DISTINCT OFFENSES.

1. The appellee was, on June 27, 1904, convicted in the Police Court upon an information charging him with assault, and sentenced to pay a fine of \$200 or in default of payment to be imprisoned in the District jail for 364 days. On the same day, upon another information charging assault upon another person, he pleaded guilty, and was remanded to await sentence. On March 14, 1905, while serving the first sentence, he was sentenced upon the second information to a term of 180 days in jail, to take effect upon the expiration of the sentence in the first case. May 4, 1905, he filed a petition for a writ of habeas corpus, and the court below, holding that the sentences were cumulative and, being in the aggregate more than one year, were in excess of the jurisdiction of the court, ordered his discharge. On appeal by the respondent, held that the court below erred in so holding, but that, the term of the second sentence having expired pending the appeal, the appeal would be dismissed.
2. The provision of section 934 of the Code, that "cumulative sentences aggregating more than one year shall be deemed one sentence within the meaning" of the provision of the same section prescribing the place of imprisonment, has no reference to a sentence to pay a pecuniary fine followed by imprisonment in default of payment, but only to cases in which the punishment is to be imprisonment.
3. Nor were the sentences imposed upon the appellee cumulative merely because two imprisonments were made successive in point of time, the convictions being upon two separate informations charging two separate and distinct offenses, and a definite sentence having been imposed in each case.
4. There is no error in a judgment in a criminal case making the term of imprisonment to commence at the expiration of a term imposed as a punishment for a separate and distinct offense; and where this forms part of the sentence the judgment is sufficiently certain as to the time when the successive sentences are to be carried into execution.

No. 1568. Decided February 18, 1906.

APPEAL by respondent from an order of the Supreme Court of the District of Columbia, Habeas Corpus, No. 386, discharging from custody a petitioner confined under a sentence of the Police Court. Appeal dismissed.

*Mr. D. W. Baker* and *Mr. Stuart McNamara* for the appellant.

*Mr. A. W. Scott* and *Mr. M. T. Olinkscales* for the appellee.

*Mr. Justice McCOMAS* delivered the opinion of the Court:

Robert Lang, the appellee, filed his petition for the writ of habeas corpus May 4, 1905, in the Supreme Court of the District of Columbia, and the writ was issued by the court and directed James H. Harris, warden of the District jail, to produce Robert Lang in court, and, upon hearing, the learned court below directed the discharge of the petitioner from the custody of the warden of the jail, who appealed to this court.

In the Police Court of the District of Columbia, on June 27, 1904, upon an information charging him with an assault, to which he pleaded "not guilty," Robert Lang was tried and convicted. He was sentenced to pay a fine of \$200, and, in default of payment of the fine, was

committed to imprisonment in the District jail for 364 days. On the same day the appellee, upon another information charging him with an assault, pleaded "guilty," and was remanded to jail to await sentence. While serving sentence under commitment for the first assault, the appellee was brought into the Police Court on March 14, 1905, and was sentenced under the second information, to which he had pleaded guilty, for a period of 180 days, the said term "to take effect upon the expiration of sentence imposed in U. S. Case No. 135,816, of date June 27, 1904."

When, on May 4, 1905, the appellee filed his petition for the writ of habeas corpus, he had been confined in the jail for 10 months and 7 days. In his petition the appellee charged that the sentence imposed on March 14, 1905, was null and void; that, deducting the time to which he was entitled on account of good conduct, the period of his first sentence had expired, and that his present and further detention was unlawful.

The appellant, the warden of the jail, in his return to the writ, stated that he held the appellee by virtue of the two sentences of the Police Court and the commitments issued thereon; that the assault in the first commitment mentioned was upon one Ida Middleton, while that in the second commitment mentioned was upon Ollie Brown.

The learned court below discharged the prisoner from custody, holding that the Police Court had no jurisdiction to impose sentence in case No. 135,817, and that the sentences imposed in No. 135,816 and No. 135,817 were cumulative and aggregated more than one year.

The appellant contends that the court below erred upon both grounds, and therefore erred in not remanding the appellee to serve the residue of the two sentences, imposed upon him for two different offenses upon two different informations.

Allowing a deduction for good conduct, the appellee's first term should have expired about April 25, 1905. If the appellee served the term of the sentence in the second charge, deducting time for probable good conduct, his incarceration should have terminated about September 26, 1905, and his release on May 5, 1906, was premature.

Section 931 of the Code allows for good conduct to all persons sentenced to imprisonment in the jail or the workhouse a deduction of five days in each month for the term.

Section 934 of the Code provides that "When any person is sentenced for a term longer than six months, and not longer than one year, such imprisonment shall be in the jail. Where the sentence is imprisonment for more than one year, it shall be in the penitentiary. Cumulative sentences aggregating more than one year shall be deemed one sentence for the purposes of the foregoing provision. When the punishment of an offense may be imprisonment for more than one year, the prosecution shall be in the Supreme Court of the District of Columbia. When the maximum punishment is a fine only or imprisonment for one year or less, the prosecution may be in the Police Court."

The appellee contends that under this section the two sentences he was required to serve

were cumulative sentences aggregating more than one year and should be deemed one sentence. In this view, the appellee's imprisonment would have been lawful until June 26, 1906, for a sentence or sentences not exceeding one year. If the court have jurisdiction to sentence for one year, such sentence is valid within the limit of the court's jurisdiction, and in this view the petitioner could only be relieved from so much of the sentence or sentences as exceed one year.

"A prisoner under an excessive sentence can not be discharged until he has performed so much of the judgment or served out so much of the sentence as it was within the power of the court to impose." *In re Swann*, 150 U. S., 637, 653; *U. S. v. Pridgeon*, 153 U. S., 48, 62; *People v. Baker*, 89 N. Y., 467.

The discharge of the appellee in this instance was premature, and the learned court below, upon the view taken by it that the two sentences were cumulative, had no authority to relieve the petitioner, who should have been remanded to the custody of the appellant to serve out the remainder of the year at least.

But we do not agree with the court below that the sentence imposed June 27, 1904, in case No. 135,816, and the sentence imposed March 14, 1905, in case No. 135,817, were cumulative. Upon the first conviction for the assault upon Ida Middleton, sentence was imposed June 27, 1904, that the appellee pay a fine of \$200, and the appellee was confined in jail in default of payment of the fine imposed, committed for the term of 364 days. This was in accordance with section 44 of the Code. The sentence imposed on March 14, 1905, was for an assault upon Ollie Brown, and was for a term of imprisonment of 180 days. The two sentences were imposed upon different informations, after separate convictions at different times, the punishments were different in character, and the appellee was convicted for separate assaults upon different persons.

The court below has in general term more than once upheld similar sentences. "The law is well settled that in a criminal case there is no error in a judgment making one term of imprisonment commence when another terminates, and when this forms part of the sentence the judgment is then considered sufficiently certain as to the time when the successive sentences are to be carried into execution." *In re Jackson*, 3 MacArthur, 24, 26; *In re George Fry*, 3 Mackey, 141.

This applies not only to the second sentence of the appellee, which was imprisonment for the assault, but as well to the first sentence, which was a fine and imprisonment in default of payment of the fine.

This Court of Appeals referred to the fact that there is a well-defined system of commutation of fines provided in this District in *United States v. Mills*, 11 App. Cas. D. C., 506: 26 Wash. Law Rep., 89, saying:

"We need go no further back than the last act of Congress upon this subject, the act of July 23, 1892 (27 Stat., 262), wherein it was expressly provided that, 'in all cases where the said (Police) Court shall impose a fine, it may, in default of the payment of the fine imposed, commit the defendant for such time as the

court thinks right and proper, not to exceed one year.'"

This provision is now section 44 of the Code, and was considered by this court in *Bowles v. District of Columbia*, 28 App. Cas. D. C., 328: 31 Wash. Law Rep., 589, where it is said:

"Imprisonment is not provided . . . by the Code as an alternative punishment; but imprisonment is very properly provided as the only available mode for the enforcement of the fines imposed as punishment. Without it there would be no practicable means for the enforcement of fines. When imprisonment is provided as an alternative punishment, it is proper so to state, and it is so stated in the laws. . . . Imprisonment could not be imposed in this case primarily; and it is always competent for the party to avoid it by paying his fine. It would not be competent for him to avoid it if it were originally imposed as punishment."

In the case before us, in June the appellee was sentenced to pay a fine, or in default to be imprisoned; in March following he was sentenced to imprisonment. Whatever may be meant by "cumulative sentences," in section 934 of the Code, the term has no application to fines as punishment.

In *ex parte Banks*, 41 Texas Crim. Rep., 202, in construing a statute very similar to the provisions of the Code, it is said:

"The statute regulating cumulative sentences refers only to cases in which imprisonment in the penitentiary or the county jail is a part of the punishment."

We are of opinion that the language of section 934 of the Code, "cumulative sentences aggregating more than one year shall be deemed one sentence for the purpose of the foregoing provision," has no reference to a sentence to pay a pecuniary fine followed by imprisonment in default of payment, but relates only to cases in which the punishment is to be imprisonment. It should be observed that the language just quoted sanctions cumulative sentences by the Police Court, the total of which do not aggregate more than one year. We conclude that the two sentences for which the appellee was imprisoned were lawful sentences and should have been served.

Nor are the sentences cumulative merely because two imprisonments are made successive in point of time, if it happen that the prisoner convicted upon two separate informations receives two separate definite sentences for the two separate offenses.

The Supreme Court of Minnesota said: "There are raised in this case only two questions. These are that the sentence is cumulative, and that a sentence can not be made to commence at a future day.

"If both offenses had been charged in one indictment, and there had been but one trial, and the plaintiff in error had been sentenced upon each count in the indictment, both sentences exceeding in the aggregate the punishment prescribed by law for such offense, the objection that the sentences were cumulative might be made. But we have never seen it laid down by any court or text writer that, because a person upon a conviction for one offense had been sentenced to the full extent of the power of the court to punish, the court can not sentence him



upon another conviction, under another indictment, separately tried, for a similar but distinct offense. It is not a case of cumulative sentences.

"The power of the court to make the term of imprisonment imposed by one sentence to commence at the expiration of the term imposed by another sentence exists from necessity; for, otherwise, a person might be convicted at the same term of the court for several distinct, similar, or dissimilar offenses, and the court have power to punish for only one. A sentence to imprisonment ought to be certain as to the time it shall commence and end; but where the court has to punish by imprisonment upon each of several convictions, to make one term commence at the expiration, by lapse of time or otherwise, of a preceding term, makes the sentence as certain as is possible under the circumstances." *Mims v. State*, 26 Minn. Rep., 498, 499.

And in *Williams v. State*, 18 Ohio St., 47, the Supreme Court of Ohio said:

"To hold that where there are two convictions and judgments of imprisonments at the same term, both must commence immediately, and be executed concurrently, would clearly be to nullify one of them. To postpone the judgment in one case until the termination of the sentence in the other would, if allowable, be attended with obvious inconvenience and expense, without any correspondent benefit to the convict. There is nothing in the statute requiring this, and it is not to be so construed as to defeat or impede the execution of its own provisions as to the punishment of crimes. We think, both upon principle and the weight of authority, that we are required to hold that it is not error, upon a conviction in a criminal case, to make one term of imprisonment commence when another terminates. There is but little force in the objection that the term of the commencement of the second term is contingent and uncertain. It is true that the first term may be ended by a pardon or a reversal of judgment, but its termination will be rendered certain by the event, and then the second sentence, by its terms, takes effect."

And the Supreme Court of Nebraska, answering a similar objection, said:

"But, in our opinion, the great weight of authority is in favor of the proposition that upon conviction of several offenses, charged in separate indictments, or in separate counts of the same indictment, the court has power to impose cumulative sentences." *In re Walsh*, 55 N. W., 1076.

In *Blitz v. United States*, 153 U. S., 308, 317, 318, the defendant was convicted upon each of the three counts in the indictment. A motion in arrest of judgment was sustained as to the second count, and the defendant was sentenced on the first count to an imprisonment in the penitentiary for a year and a day, and on the third count for a like period beginning upon the expiration of the sentence on the first count. The Supreme Court held that the motion in arrest of judgment should have been sustained as to the first count also. It affirmed the judgment on the third count and directed that the term of imprisonment thereunder should be held to commence on the day named for the commencement of the first term. As the court below had pronounced judgment on both the

first and third counts, the imprisonment under the third count commenced upon the expiration of the judgment on the first count; therefore, the plaintiff in error contended that there should be a new trial, but the Supreme Court said:

"In *Kite v. Commonwealth*, 11 Met. (Mass), 581, 585, it appeared that the accused was sentenced for a named period to confinement at hard labor, to take effect from and after the expiration of three previous sentences specified. The judgment was objected to as erroneous and void, because there were not three former sentences, legal and valid, and therefore no fixed time from which the punishment on the last sentence should begin. Chief Justice Shaw, referring to this objection, and delivering the unanimous judgment of the court, said that it was not an error in a judgment in a criminal case to make one term of imprisonment commence when another terminates. 'It is as certain,' he said, 'as the nature of the case will admit, and there is no other mode in which a party may be sentenced on several convictions. Though uncertain at the time, depending upon a possible contingency that the imprisonment on the former sentence will be remitted or shortened, it will be made certain by the event. If the previous sentence is shortened by a reversal of the judgment or a pardon, it then expires, and then, by its terms, the sentence in question takes effect as if the previous one had expired by lapse of time. Nor will it make any difference that the previous judgment is reversed for error. It is voidable only, not void; and until reversed by a judgment, it is to be deemed of full force and effect, and though erroneous and subsequently reversed on error, it is quite sufficient to fix the term at which another sentence shall take effect.' See, also, *Dolan's Case*, 101 Mass., 219, 223." *Blitz v. United States*, supra, 317, 318.

The appellee in the case before us committed two successive offenses, and it was competent for the court to punish him for the two different offenses. It would be very unjust to hold that if one person committed one misdemeanor the Police Court could punish him for that offense; that if he committed a second like offense immediately after the other, he should have immunity from punishment because the two sentences for the different offenses resulted in successive terms of imprisonment.

If this were a case where the appellee were still in jail awaiting the result of the appeal of the warden of the jail, we would reverse the order appealed from and remand the case to the Supreme Court of the District of Columbia with direction to proceed therein in accordance with law and in a manner not inconsistent with this opinion.

On a habeas corpus, where the personal liberty of the citizen is involved, our decision should be made upon the actual status of the case.

This record discloses that the term of the second sentence of the appellee has expired, and although he did not serve the full period of his imprisonment by reason of his discharge by the court below, the time which he lawfully should have served has now expired. To direct a reversal of the order of the court below would be to do a vain thing.

It appears in No. 135,817 that on June 27, 1904, the defendant was arraigned and plead guilty, a judgment of guilty was entered, and the last entry of that date was "committed to jail and held to await sentence." The next and final entry was "March 14, 1905, sentenced to be imprisoned 180 days in jail, to take effect upon the expiration of sentence imposed in U. S. case No. 135,816, of date June 27, 1904. Committed."

We will not consider whether the Police Court, which may suspend judgment in its discretion for proper reasons shown and which has statutory power to extend a term of its court, has power to withhold sentence during a long and indefinite period. It may be that in this case the term was extended until the time of sentence. At least, nothing appears to the contrary.

Concerning the suspension of sentence in this case in its present status, we may accept the language of the Supreme Court of Tennessee that "in favor of the propriety of the action of the court we would presume good cause appeared for such suspension." *State v. Charles Miller*, 65 Tenn., 513.

Many States by statute provide that the prisoner shall not be discharged under a writ of habeas corpus where it appears that he is held in custody by virtue of the judgment of a court of competent jurisdiction, and the courts uniformly hold that the writ of habeas corpus is not to take the place of a writ of error or the appeal. See *Smith v. Harris*, warden, 91 Ind., 423.

It is not necessary in this case to consider whether or not there are limitations upon the right of the Police Courts to suspend sentence beyond the current term or the succeeding term, and if so, what such limitations may be.

The only formal order we can now enter is an order dismissing the appeal, in view of the expiration of the second sentence of the appellee pending the consideration of this appeal by this court. *U. S. v. Mills*, 11 App. Cas. D. C., 510, 511: 26 Wash. Law Rep., 89.

As the appeal must be dismissed, it is now so ordered.

**Bankruptcy Act—Section 3a (5)—Corporation—Directors Holding Over May Admit Inability to Pay Debts, etc.**—Where there has been a failure to hold a meeting of stockholders for the purpose of electing directors of a corporation, the previously elected directors hold over and become de facto directors whose actions can not be attacked in a collateral proceeding, and such de facto officers have the power at a legally convened meeting to admit in writing the inability of their corporation to pay its debts and its willingness to be adjudged bankrupt under section 3a (5) of the Bankruptcy Act, 1898. *Matter of Riley, Talbot and Hunt*, 15 Am. B. R., 159.

**Same—Policy not Exempt Before Bankrupt's Death.**—Such a policy, prior to the death of the insured and the expiration of the tontine period, is not exempt property under section 22 of the Domestic Relations Law of New York and section 6 of the Bankrupt Law. *Matter of Phelps*, 15 Am. B. R., 170.

## Court of Appeals of the District of Columbia.

JAMES H. HARRIS, WARDEN OF THE  
JAIL, APPELLANT,

v.

WILLIAM NIXON and HERBERT PETERS,  
APPELLEES.

POLICE COURT; CUMULATIVE SENTENCES; SEPARATE  
SENTENCES FOR DISTINCT OFFENSES.

1. January 14, 1905, appellees pleaded guilty in the Police Court on six separate informations charging distinct offenses of petit larceny. They were sentenced in the first three cases to be imprisoned 120 days in each case, the imprisonment to be successive in point of time; and in the last three cases continuances were entered to November 10, 1905. On that date the last of the sentences imposed in the first three cases expired, and appellees were discharged; but on the same day the court imposed sentence in the last three cases of \$20 fine or imprisonment for 60 days in default of payment, in each case, the terms of imprisonment to be successive in point of time. Upon petition for a writ of habeas corpus, the court below held the sentences in the six cases to be cumulative, and that the Police Court was without jurisdiction to impose sentence in the last three cases, and discharged the appellees from custody. On appeal by the respondent, held that the court below erred in so holding, and its order discharging the appellees from custody reversed.
2. To warrant the discharge upon habeas corpus of a party confined under sentence of a court, the sentence under which he is held must be not merely erroneous, but absolutely void.

No. 1638. Decided February 14, 1906.

APPEAL by respondent from a judgment of the Supreme Court of the District of Columbia, Habeas Corpus, No. 411, discharging the appellees from custody. Reversed.

*Mr. D. W. Baker* and *Mr. Stuart McNamara* for the appellant.

*Mr. A. W. Scott* and *Mr. M. T. Clinkscales* for the appellees.

*Mr. Justice McCOMAS* delivered the opinion of the Court:

This case is a petition for a writ of habeas corpus filed by William Nixon and Herbert Peters in the Supreme Court of the District of Columbia.

It appears that on January 14, 1905, the two petitioners, defendants below, were arraigned upon six different informations charging them with six different offenses of petit larceny. The appellees plead "guilty" to all of the six informations, and the Police Court proceeded to sentence the appellees upon informations 139,264, 139,265, and 139,266, by imposing sentence that the appellees be imprisoned in the District jail for a period of 120 days upon information 139,264, for a period of 120 days upon information 139,265, the sentence to take effect upon the expiration of sentence imposed under information 139,264; for a period of 120 days upon information 139,266, the said sentence to take effect upon the expiration of the sentence imposed under information 139,265. The total of the three sentences aggregated 360 days.

In the last three cases 139,267, 139,268, and 139,269, continuances were entered to November 10, 1905. Upon that day the appellees had served 300 days upon the three sentences before recited. They were brought into the Police Court and, because of sixty days' deduction on

account of good conduct, were discharged from further imprisonment in the jail. On the same day the Police Court sentenced the appellees upon the three informations last mentioned, sentencing them in case 139,267 to pay a fine of \$20 each, and in default of payment to be imprisoned in jail for a term of sixty days each; in case 139,268 to pay a fine of \$20 each and in default to be imprisoned in jail for a term of sixty days each, said sentence to take effect upon the expiration of imprisonment under sentence in case 139,267; in case 139,269 to pay a fine of \$20 each and in default to be imprisoned for a term of sixty days each, the said sentence to take effect upon the expiration of imprisonment under sentence in case 139,268, of even date therewith.

After commitment to the District jail on November 10, 1905, the appellees filed their petition in the Supreme Court of the District of Columbia, which set forth the facts just recited, and charged that the Police Court was without jurisdiction to impose sentence in the three cases last mentioned, and, therefore, their present and future detention under such sentences just recited was without authority or warrant in law.

The warden of the jail answered that he held the bodies of the appellees upon three warrants of commitment from the Police Court, all dated November 10, 1905, the commitments being under the three sentences just recited. Allowing time for good conduct, the imprisonment of the appellees should have terminated about April 9, 1906, if they served the aggregate of the successive sentences imposed by the Police Court. The appellees demurred to the return of the warden of the jail. The Supreme Court of the District of Columbia sustained the demurrer and discharged the appellees from the custody of the appellant. The appellant contends that the court below erred in holding that the Police Court had no jurisdiction to impose sentences in cases 139,267, 139,268, and 139,269, and in holding that the sentences imposed in all of the six cases before mentioned were cumulative, and that it erred in discharging the appellees from the custody of the appellant.

For the reasons just stated in the case of *Harris v. Lang*, the learned court below erred in holding these successive sentences for different offenses to be cumulative sentences, and in discharging the appellees from the custody of the warden of the jail upon that ground. The appellees are now at large. The term of their imprisonment has not yet expired. The order of the learned court will therefore be reversed and this cause remanded for further proceedings not inconsistent with this opinion.

In this case, the record shows that the defendants were convicted on January 14, 1905, and that in the three cases last mentioned, after the judgment of "guilty" was entered in each case, each of these three cases were continued to November 10, 1905. Like the case of *Harris v. Lang*, this case discloses extraordinary prolongation of the term and delay in imposing sentence.

Section 50 of the Code provides that:

"The said (Police) court shall hold a term on the first Monday of every month, and continue the same from day to day as long as it may be

necessary for the transaction of its business."

This statute limits the term of the Police Court to one month and empowers the court to continue the term from day to day as long as it may be necessary for the transaction of its business. The expression "from day to day" suggests that it was not contemplated that the continued term would extend beyond the period of the next term of the Police Court. It is at least doubtful whether the statute intends that a term of court whose duration is one month may be continued from month to month, and, as in this case, whether the January term should be continued until the November term. A great number of cases must be disposed of by the Police Court. Such continuances, if often granted, must affect the rights of accused persons. Inextricable confusion must result.

We do not assume that a judge holding a Police Court, if he believed the penalty prescribed by law for an offense to be inadequate, would, upon conviction of the offender, evade the law in order to severely punish the convict. The large powers of the courts should not be used to legislate a different and heavier penalty than the law intended. Congress determines the character of punishment for an offense and the court fulfils its duty when, by a fine or imprisonment, it imposes the penalty prescribed by the statute. The court may think the offense deserves severer punishment. In a criminal case the judgment of the law is the sentence, and it is the sentence of the law that the court must impose; nothing more. The sure and swift punishment of violators of the law is more effective than severity. We do not assume that the Police Court would, with the best intent, resort to unnecessary continuances, and thereby seek to exceed the penalties which the law prescribes.

We repeat, the appellees have been discharged. The writ of habeas corpus is in the nature of the writ of error, which brings up the body of the prisoner with the cause of commitment. It can not serve as a writ of error or as an appeal to enable us to reexamine the judgment in the Police Court, as the Supreme Court said, upon a like petition, "if this judgment be obligatory, no court can look behind it. If it be a nullity, the officer who obeys it is guilty of false imprisonment." *Ex parte Watkins*, 3 Peters, 202-203.

The court may suspend for a time the execution of its judgment in a proper case. As we have said in the case of *Harris v. Lang*, this court will make every reasonable presumption in favor of the propriety of the action of the Police Court.

"Neither irregularities nor error, so far as they were within the jurisdiction of the court, can be inquired into upon a writ of habeas corpus, because a writ of habeas corpus can not be made to perform the functions of a writ of error in relation to proceedings of a court within its jurisdiction." *U. S. v. Pridgeon*, 153 U. S., 48, 63.

To warrant the discharge of the petitioner upon this writ, the sentence under which he is held must be not merely erroneous, but absolutely void. It would be highly inconvenient in the administration of criminal justice that the power of the court to pronounce judgment

should be limited to the particular term at which the trial is had. A due regard to the rights of the prisoner may induce a delay of sentence. A motion for a new trial or other lawful intervention may prompt this course. The statute recognizes these considerations and in respect of the Police Court provides that it shall not lack power. It would seem that section 50 of the Code, really affirmed a pre-existing power, and therefore ought not to be construed to vary the nature of that power common to all courts to adjourn to a distant day or to continue an existing term beyond the lawful period of its duration.

The case of *United States v. May*, 2 Mac Arthur, 513, may have encouraged the practice of the extension of terms by saying:

"If the judge, by accident, mistake, or design, should fail to pass sentence during the term of the court at which the verdict was found, he may do so at a subsequent term, and so may any other judge holding the same court."

It has been held by some courts that a long suspension of sentence, when not accompanied by imprisonment, is an interference with the pardoning power, and it is possible that to suspend sentence of persons in custody, as we have said, may permit a court to impose a greater punishment than the law itself imposes for the offenses. These interesting questions are very ably discussed by Chief Justice Thompson in *Commonwealth v. Meloy*, 57 Penna. St., 291.

Whether the Police Court has power to suspend sentence for an indefinite period, we do not in this case need to decide. The highest motives often suggest a suspension of sentence: consideration for youth, particular circumstances mitigating the offenses, or the action aggravating it; yet as was said in *The People v. Allen*, 155 Ill. Rep., 63:

"On the other hand the State has a right to demand and the welfare of society requires that those who are convicted or plead guilty of violations of the law shall be promptly and certainly punished."

We quote from *The People v. Allen*, supra, 63-65, still further:

"In Archbold's Criminal Practice (par. 180), the author says: 'If no motion be made in arrest of the judgment, or if made and decided against the defendant, the judge at the assizes, or the recorder, or the chairman of the session, proceeds to pass sentence. Sometimes this is done immediately after each trial, sometimes at the end of each day, sometimes on some other day of the assizes or sessions. The first seems the better method.' 'The judgment or sentence of the court is usually given soon after the conviction—at least during the same term of the court at which the prisoner is convicted—unless the rendering of the judgment is stayed by a filing of a bill of exceptions for the purpose of taking the opinion of the Supreme Court upon the case.' 'No court has authority to suspend sentence indefinitely against criminals who have been found guilty by a jury or have pleaded guilty. A suspension of sentence or stay is not authorized except upon a certiorari, or writ of error, or an application in arrest of judgment, or for a new trial.' Colby on Crim. Law, 390-392). In *People v. Monsetts*, 30 How. Pr., 118, Balcom, J., uses the following language: 'I am of the opinion

the court does not possess the power to suspend sentence indefinitely in any case.'"

These views are suggestive. Perhaps they too greatly restrict the power and discretion of the courts. However that may be, we do not intend in this case upon habeas corpus to consider and decide the power of the Police Court to suspend sentence, either in a case where the prisoner is discharged from imprisonment, whereby an indefinite suspension of the sentence prescribed by law may be a quasi pardon, or in a case wherein the prisoner may be committed, whereby a long suspension of a sentence may permit a delayed sentence to extend the punishment beyond the maximum penalty prescribed by law.

The sentences in *Harris v. Lang*, and in this case, suggested these observations, and we have refrained from saying whether in our view there are limitations upon the power of the Police Court to suspend sentence, and if so, what are the principles which limit the exercise of such power.

In this case, as in the case of *Harris v. Lang*, the appellees have been discharged prematurely, but the time during which they should have remained in the District jail has not yet expired.

The order of the Supreme Court of the District of Columbia is reversed, and this cause is remanded to said court for further proceedings not inconsistent with this opinion.

Reversed.

The mere finishing material, such as doors, mantels, casings, etc., which have been purchased for an unfinished building and placed therein, but not affixed thereto, is held, in *Blue v. Gunn* (Tenn.), 69 L. R. A., 892, not to pass by a sale of the real property under a mortgage foreclosure, where it is not mentioned or deemed a part of the sale.

A mortgage of a lot on which stands a partially completed building is held, in *Byrne v. Werner* (Mich.), 69 L. R. A., 900, to pass cut stone and structural iron prepared for the building, and located on the lot mortgaged and that adjoining, if the intention of the parties is that the building shall be speedily completed with the material at hand. The question, are things placed on land with the intention of annexing them fixtures where they are never actually attached?—is the subject of a note to this case.

That no implied warranty of fitness of an article for a particular purpose arises out of a contract to make or supply a described and definite article, is declared in *Davis Calyx Drill Co. v. Mallory*, C. C. App., 8th C., 69 L. R. A., 973, although the vendor knows that the vendee is purchasing it to accomplish a specific purpose, because the essence of this contract is the delivery of the specific article, and not the accomplishment of the purpose.

A decree of a probate court having jurisdiction, assigning the residue of the estate of a deceased person, is held, in *Ladd v. Weiskopf* (Minn.), 69 L. R. A., 785, to be conclusive upon all persons interested in the estate, whether then in being or not.

The proximate cause of the injury of a servant by the fall of a derrick because of the breaking of a spliced rope is held, in *Rincicotti v. John J. O'Brien Contracting Co.* (Conn.), 69 L. R. A., 936, not to be the failure to insert thimbles into the loops of the splice, but the failure to inspect the rope for the purpose of determining its condition, and to repair it after it has become chafed and worn by use, where there is nothing to show that the splice is not sufficiently strong, without the thimbles, to do the work required of it, and it fails because of the wear due to continued use.

The removal of the widow as trustee of a fund provided for the benefit of testator's daughter is held, in *Polk v. Linthicum* (Md.), 69 L. R. A., 920, to be required, where she elected to take her dower rights in opposition to the will, thereby depleting the trust estate, and destroying a very important part of the scheme of the testator, remarried within a short time, became estranged from the *cestui que trust* and her cotrustees, so that no intercourse could subsist between them, and kept the estate in needless litigation.

An open mortgage clause attached to a policy of fire insurance, which merely provides that loss, if any, shall be paid to the mortgagee as his interest may appear, is held, in *Collinsville Sav. Soc. v. Boston Ins. Co.* (Conn.), 69 L. R. A., 924, not to create any contract relations between the mortgagee and insurer, or to give the mortgagee a right to participate in arbitration proceedings to fix the amount of loss; and that, therefore, he will be bound by the award, although he was given no opportunity to be heard.

The liability of an employer to an employee for injuries caused by negligence in the handling of a boiler upon the premises, by a coemployee, an engineer who is conceded to have been competent, is denied in *Service v. Shoneman* (Pa.), 69 L. R. A., 792.

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### Legal Notices.

#### RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

### Legal Notices.

#### FIRST INSERTION.

John C. Gittings, Solicitor  
In the Supreme Court of the District of Columbia,  
Rosie May Hazard, Complainant, v. Richard J. Hazard, Defendant. Equity No. 23,980.

The object of this suit is to obtain a divorce a vinculo matrimonii. On motion of the complainant it is this 16th day of March, A. D. 1908, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order to be published in The Washington Law Reporter and The Washington Times once a week for three successive weeks. HARRY M. CLABAUGH, Justice.

A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 12-31

W. Russell Graham, Attorney  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.

In re Estate of James Storey, Deceased.  
Administration. No. 13,382.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for the probate of a paper writing purporting to be the last will and testament of James Storey, deceased, and Eva M. Payne, one of the persons named in said application as an heir at law and next of kin of the decedent, having been returned "Not to be found," it is, this 20th day of March, 1908, ordered that said Eva M. Payne appear in said court on or before Thursday, the 26th day of April, 1908, at 10 o'clock A. M., and show cause why such application should not be granted. Provided a copy of this notice be published once in each week for three successive weeks before the return day above mentioned in The Washington Law Reporter and The Washington Times, the first publication to be not less than thirty days before said return day.

By the Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Attest: James Tanner, Register of Wills. 12-31

Charles J. Murphy, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Mary W. Ryan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of March, 1908. CHARLES J. MURPHY, 412 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,446. Administration. [Seal.] 12-31

W. Calvin Chase and W. C. Martin, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of West Dent, otherwise known as Westley Dent, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of March, 1906. SAMUEL M. PIERRE, 2124 L st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,374. Administration. [Seal.] 12-31

**Legal Notices.****Glittings & Chamberlin, Attorneys**

**Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Harriet Ann Butler, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Tuesday, the 10th day of April, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 20th day of March, 1906. WALLACE MCK. STOWELL, by Glittings & Chamberlin, Attorneys. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,689. Administration. [Seal.] 12-3t

**W. A. McKenney, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Frederick M. Detweiler, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Friday, the 13th day of April, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 20th day of March, 1906. AMERICAN SECURITY AND TRUST COMPANY, by Jas. F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,737. Administration. [Seal.] 12-3t

**E. H. Thomas and James Francis Smith, Attorneys  
In the Supreme Court of the District of Columbia,  
Holding a District Court.**

**In the Matter of the Opening of an Alley in Square  
Numbered Sixty-one (61) in the District of Columbia,  
No. — District Court. Docket, No. 2.**

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of an act of Congress approved February 28, 1905, entitled "An act to amend chapter fifty-five of an act entitled 'An act to establish a code of law for the District of Columbia,'" have filed a petition in this court praying the condemnation of the land necessary for the opening of an alley in square numbered sixty-one (61), in the District of Columbia, as shown on a plat or map filed with the said petition, as part thereof, and praying also that a jury of five judicious, disinterested men, not related to any person interested in these proceedings and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States marshal for the District of Columbia to assess the damages each owner of land to be taken may sustain by reason of the opening of the aforesaid alley, and the condemnation of the land necessary for the purposes thereof, and to assess the benefits resulting therefrom, including the expenses of these proceedings, as provided for in and by the aforesaid act of Congress. It is, by the court, this 21st day of March, A. D. 1906, ordered, that all persons having any interest in these proceedings be, and they are hereby, warned and commanded to appear in this court on or before the 5th day of April, A. D. 1906, at 10 o'clock A. M., and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be empaneled and sworn herein; and it is further ordered, that a copy of this notice and order be published once in The Washington Law Reporter and once in The Washington Evening Star, The Washington Post, and The Washington Times, newspapers published in the said District, before the said 5th day of April, A. D. 1906. It is further ordered, that a copy of this notice and order be served by the United States marshal for the said District, or his deputies, upon such of the owners of the fee of the land to be condemned herein as may be found by the said marshal, or his deputies, within the District of Columbia, before the

[Seal] said 5th day of April, A. D. 1906. By the court, JOBBARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 12-1t

**Legal Notices.**

**Wm. H. Linkins, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Joseph D. Milans, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of March, 1906. JOSEPH H. MILANS, McGill bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,568. Administration. [Seal.] 12-3t

**W. A. McKenney, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of George Brown, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Friday, the 13th day of April, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 21st day of March, 1906. AMERICAN SECURITY AND TRUST COMPANY, by Jas. F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 10,379. Administration. [Seal.] 12-3t

**J. A. Maedel, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of George C. Walker, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of March, 1906. KATIE CLIPPER, 406 M st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,649. Administration. [Seal.] 12-3t

**P. R. Hilliard, Attorney  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**In the Matter of the Estate of Margaret Carroll, Deceased. Administration. No. 13,546.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by William H. McGrann and Mary Ellen Halpin, it is ordered this 21st day of March, A. D. 1906, that notice be and hereby is given to William Crahan (a brother), Daniel Crahan, John Crahan, Mary Crahan, Annie Crahan, James Crahan, Martin Crahan, William Crahan (a nephew), Ella Crahan, Julia Bresnahan, Lydia L. Cordes, May F. Cordes, Margaret Manning, Patrick Walsh, Mrs. Michael Sweeney, Margaret Lynch, James Dacey, Johanna Labrier, Nellie Cochran, John Dacey, Cornelius Dacey, Mary Limbaugh, Katie Reigney, Bridget Skelly, Howard Harpole, Tessie Harpole, Claude Harpole, Ora Harpole, Aro Harpole, and to the unknown heirs at law and next of kin of said Margaret Carroll, deceased, and to all others concerned, to appear in said court on Wednesday, the 25th day of April, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] HARRY M. CLABAUGH, Chief Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 12-3t

**Legal Notices.****W. H. Landvoigt, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of Louis Schnebel, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of March, 1906. LIZZIE SCHNEBEL, 533 8th st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,431. Administration. [Seal.] 12-3t

**Chas. W. Darr and Richard A. Curtin, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.  
Estate of Mary L. Porter, Deceased.  
No. 13,518. Administration.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Walter E. Ennis, it is ordered this 19th day of March, A. D. 1906, that notice be and hereby is given to—Porter, husband of Mary L. Porter, and to all others concerned, to appear in said court on Monday, the 23d day of April, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty

[Seal] days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 12-3t

**H. D. Moulton, Solicitor****In the Supreme Court of the District of Columbia.**

**Harriet C. Loudin, Plaintiff, vs. Clifford P. Loudin, Adele Loudin, Blanche Loudin, Gladys Loudin, Henry Wyatt, Clyde Wyatt, Alma Wyatt, Frederick Wyatt, and Leroy Wyatt, Defendants.**

In Equity. No. 25,997.

On motion of the plaintiff, by Mr. Harry D. Moulton, her attorney, it is this 16th day of March, 1906, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Times; otherwise the cause will be proceeded with as in case of default. The object of this suit is to secure to the plaintiff, Harriet C. Loudin, assignment of dower in, and partition of, according to the interests of the parties hereto, the following described real estate, situate and lying in the city and county of Washington, District of Columbia, to wit: All that tract and certain piece or parcel of land and premises known and distinguished as and being parts of original lots numbered thirteen and fourteen (13 and 14) in square numbered one hundred and ninety-eight (198), beginning for the same on "L" street, forty-four (44) feet west from the northeast corner of original lot numbered fourteen (14), and running thence west along "L" street eighteen (18) feet, thence south one hundred and forty-six (146) feet and eleven (11) inches to a public alley, thence east along the line of said alley eighteen (18) feet, and thence north one hundred and forty-six (146) feet and eleven (11) inches to the place of beginning. Also the following described real estate, situate in the city and county of Washington, District of Columbia, to wit: All that parcel of land and premises known as being lot numbered eighty-nine (89) in W. O. Denison and Benjamin F. Leighton, trustees, subdivision of part of the tracts known as "Mount Pleasant" and "Pleasant Plains," as per plat recorded in liber county number six (6), folio six (6) of the records of the surveyor's office of the District of Columbia, said lot containing 29,580 square feet. Said defendants, Clifford P. Loudin and Adele Loudin, are of age. The other defendants are minors.

[Seal] By the court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 12-3t

Justice blanks of every description for sale at this office.

**Legal Notices.****Brandenburg & Brandenburg, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John E. C. Smedes, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of March, 1906. E. B. SMEDES, 51 Wall st., N. Y. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,521. Administration. [Seal.] 12-3t

**John Baum, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Edward W. Summers, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of March, 1906. WILLIAM E. JORDAN, Anacostia, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,482. Administration. [Seal.] 12-3t

**SECOND INSERTION.****Lambert & Baker, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Daniel A. O'Donnell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of March, 1906. CATHERINE S. O'DONNELL, 1229 N. J. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,329. Administration. [Seal.] 11-3t

**E. S. Mussey, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of John Eaton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of March, 1906. ALICE S. EATON, The Concord. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,589. Administration. [Seal.] 11-3t

**E. H. Thomas, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John R. Wright, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of March, 1906. EDWARD H. THOMAS, 916 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,368. Administration. [Seal.] 11-3t



**Legal Notices.**

**F. Edward Mitchell, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Sarah P. Harbin, Deceased.**  
**No. 13,378. Administration.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by George F. Harbin, it is ordered, this 14th day of March, A. D. 1906, that notice be, and hereby is, given to James T. Harbin, Manila, Philippine Islands; John Jones, Charles County, Maryland; Elizabeth Jones, Nome, Alaska, and Richard Jones, who last resided at Texas, and to all others concerned, to appear in said court on Monday, the 16th day of April, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.  
 [Seal] **WENDELL P. STAFFORD, Justice. Attest:**  
**James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court.** 11-3t

**Henry C. Stewart, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, who were by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Eleanor J. Cooper, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Thursday, the 12th day of April, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 14th day of March, 1906. **JAMES M. GREEN, WILLIAM E. TUTTLE, JR., ARTHUR D. TUTTLE;** by **Henry C. Stewart, Attorney. Attest:** **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,490. Administration. [Seal.]** 11-3t

**Reginald S. Huidekoper, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**Mary E. McElhannon, Complainant, v. J. Walter McElhannon and Catherine Burgess, Defendants.**  
**In Equity. No. 25,762.**

The object of this suit is to obtain a divorce from the bonds of marriage. On motion of the complainant, it is, this 14th day of March, A. D. 1906, ordered that the defendants, J. Walter McElhannon and Catherine Burgess, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise, this cause will be proceeded with as in case of default. This order is to be published in The Washington Law Reporter and The Washington Times once a week for three successive weeks. By the Court. **HARRY M. CLABAUGH, Chief Justice. A true copy.**  
**Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk.** 11-3t

**E. H. Thomas, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**In re Estate of Reuben B. Detrick, Deceased.**  
**Adm. No. 12,549.**

The executor and trustee having reported that he has sold lots numbered twenty-eight (28) and twenty-nine (29) in square numbered eight hundred and thirty-two (322), in the city of Washington, District of Columbia, to Emanuel Speich for seven hundred (\$700) dollars, all cash, less three (3%) per cent brokerage commission, it is by the court, this 14th day of March, A. D. 1906, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 14th day of April, 1906. Provided a copy of this order be published in The Washington Law Reporter once a week for each of three successive weeks before said last named day. **WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills.** 11-3t

**Legal Notices.**

**William M. Lewin, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the State of Pennsylvania, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Alexander Fishel, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of March, 1906. **BIRD A. JACOBS, 726 7th st. N. W., Wash., D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,532. Administration. [Seal.]** 11-3t

**J. D. Sullivan, Solicitor**

**In the Supreme Court of the District of Columbia**  
**Silas S. Dalsh v. Unknown Heirs, etc., of Martin Foley et al.**

**Equity, No. 25,500.**

The object of this suit is to establish the title of the complainant against the defendants by adverse possession in and to the south half of lot five (5) in Samuel Davidson's subdivision of lots in square 183, as per plat recorded in Liber N. K., folios 19 and 20, of the records of the office of the surveyor of the District of Columbia. It appearing to the court that the summons issued herein has been returned not to be found as to the defendants herein named, and it further appearing to the court that upon good cause shown by affidavits herein filed it is not necessary that this order should be published twice a month for a period of not less than three months, on motion of the complainant, it is, this 14th day of March, A. D. 1906, ordered that the defendants, Martin Foley, Junior, George Hatch, Samuel Hatch, Sarah J. Burdick, and Amanda Bennett, and the unknown heirs, devisees, and allenees of such of them as are dead, and the unknown heirs, devisees, and allenees of Martin Foley, senior, Martin Foley, Junior, and James H. Murphy, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of forty days, exclusive of Sundays and legal holidays, after the day of the first publication of this order; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for four successive weeks before said return day in The Washington Law Reporter and Washington Times, said order to be published twice a month in the month of March, 1906. **HARRY M. CLABAUGH, Chief Justice. True copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk.** 11-4t

**P. W. Frisby, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Frank Braxton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 14th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of March, 1906. **MARY E. BRAXTON, 2043 9th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,548. Administration. [Seal.]** 11-3t

**E. H. Thomas, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**In re Estate of Reuben B. Detrick, Deceased.**  
**Adm. No. 12,549.**

The executor and trustee having reported that he has sold premises Nos. 1678, 1680, 1682, and 1684 Kramer street northeast, in the city of Washington, District of Columbia, being sublots numbered 218, 219, 220, and 221 in block numbered 27, Rosedale, to Percy H. Russell, for the net sum of twenty-nine hundred (\$2,900) dollars cash, it is by the court, this 14th day of March, 1906, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 14th day of April, 1906. Provided a copy of this order be published in the Washington Law Reporter once a week for each of three successive weeks before said last named day. **WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills.** 11-3t

**Legal Notices.****Thompson & Laskey, Solicitors****In the Supreme Court of the District of Columbia,  
Holding an Equity Court.****Mary J. Cooper, Complainant, v. Thomas E. Wagman et al., Defendants. No. 25,979.**

The object of this suit is to have substituted a trustee under the will of Mary McKenney, deceased, for the purpose of carrying out the provisions of said will. On motion of the complainant, it is, this 15th day of February, A. D. 1906, ordered that the defendant, Mary Kane, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three

[Seal] successive weeks in The Washington Times.  
WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 11-3t

**Chas. S. Shreve, Jr., Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Mary A. Johnson, otherwise known as Mary A. Bridges, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of March, 1906. THOMAS S. SERGEON, 1011 7th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,410. Administration. [Seal.] 11-3t

**Chas. H. Bauman, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Caroline Buehler, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 9th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of March, 1906. JOHN OCKENSHAUSEN, 1238 20th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,515. Administration. [Seal.] 11-3t

**G. P. McGlue, Attorney****In the Supreme Court of the District of Columbia.****Bartholomew Daly v. Leander Scott et al.  
Equity No. 28,048.**

The object of this suit is to establish the title of the complainant by adverse possession to the following described real estate, situate in the city of Washington, District of Columbia, to wit: lots numbered sixteen (16), seventeen (17), nineteen (19), and twenty-one (21), in William B. Todd's subdivision of part of square numbered ten hundred and thirty-three (1033), as per plat recorded in the office of the surveyor of said District, in liber W. F., folio 151. On motion of the complainant, by G. Percy McGlue, his solicitor, it is, this 9th day of March, 1906, ordered that the defendants, Leander Scott, William L. Scott, Julian F. Scott, Corrine L. Scott, William L. Scott, Junior, Mary P. Scott, Leanna Cory, Louisa Scott, Martha C. Scott, a minor, Clara I. Scott, a minor, Libbie Smith, Samuel W. Young, Ruth Riekey, Ruth H. Morrow, Sarah E. Steen, Herod Osborn, Richard Osborn, Decatur Osborn, Mason Osborn, Grace Osborn, Alverda Osborn, Jane Campbell, and Elizabeth M. Young, cause their appearance to be entered herein, on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks prior to said return day in The Washington Law

[Seal] Reporter and The Washington Post. WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 11-3t

**Legal Notices.****Joseph E. Fague, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Jonathan Hamilton, Deceased.  
Administration, No. 13,503.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Samuel M. Tyler, it is ordered this 9th day of March, A. D. 1906, that notice be and hereby is given to Charles E. Hamilton, and to all others concerned, to appear in said court on Thursday, the 19th day of April, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said

[Seal] return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 11-3t

**THIRD INSERTION.**

[Filed March 2, 1906. J. R. Young, Clerk.]

**In the Supreme Court of the District of Columbia,  
Holding an Equity Court.****Charles H. Fisher et al. v. Frank B. Ford et al.  
Equity No. 25,981. Doc. 57.**

Samuel V. Hayden, trustee, having reported an offer by William A. Engeman, to purchase for \$5,000.00 the property described in these proceedings, to wit, lot one hundred and five (105), square seven hundred and twenty-one (721), in W. H. Barnes and B. H. Warder's subdivision of part of lot twenty-three (23), as said subdivision is recorded in book 17, page 101, in the surveyor's office of the District of Columbia, it is, this 2d day of March, 1906, ordered that said offer be, and is hereby accepted and the said sale be and the same hereby is ratified and confirmed unless cause to the contrary be shown on or before the 2d day of April, 1906. Provided a copy of this order be published in The Washington Law Reporter once a week for three (3) successive weeks before said last mentioned day.

[Seal] By the Court: WENDELL P. STAFFORD. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 10-3t

**Leon Tobriner and Byron U. Graham, Solicitors****In the Supreme Court of the District of Columbia.****Isador Neuburger, Trustee, v. Charles W. Dant et al.  
No. 25,888. Equity.**

The object of this suit is to perfect complainant's title to part of lot lettered "G" in Benjamin Pollard's subdivision of part of square numbered five hundred and seventy (570) as per plat recorded in liber N. K., folio 177, of the records of the office of the surveyor of the District of Columbia, described as follows: Beginning for the same on "D" street at the southwest corner of said lot, and running thence east on said street seventeen (17) feet six (6) inches; thence north one hundred and twenty (120) feet to a public alley fifteen (15) feet wide; thence west on said alley seventeen (17) feet six (6) inches to the northwest corner of said lot; and thence south one hundred and twenty (120) feet to the place of beginning. On motion of the complainant, by his solicitors, Leon Tobriner and Byron U. Graham, it is this seventh (7) day of March, A. D. 1906, ordered that the defendants, Annie Middleton, Edith LePreux, Fannie Mullen, George Dant, Allan Dant, Victor Dant, Frances P. Hurley, George J. Hurley, and William B. Hurley, cause their appearance to be entered herein on or before the fortieth (40th) day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs, alienees, and devisees of Richard T. Queen, cause their appearance to be entered herein on or before the first rule day occurring three months after the publication of this order; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks prior to said first return day and twice a month for three successive months prior to said latter return day (the last publication to include one of the former publications) in The Washington Law Reporter and The Washington Times. By the court: HARRY M. CLABAUGH, Chief Justice. A true copy.

[Seal] Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. mar. 9-16-26-30; apr 20-27; may 18-25-1906

**Legal Notices****Wm. Henry Dennis, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the States of New York, Massachusetts, and Rhode Island, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Herbert G. Ogden, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 1st day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 1st day of March, 1906. HERBERT G. OGDEN, Jr., 141 Broadway, New York; WARREN G. OGDEN, Quincy, Mass.; N. DARRELL HARVEY, 282 Benefit st., Providence, R. I. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,527. Administration. [Seal.] 10-31

**Wm. L. Browning, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Louisa S. Swasey, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of March, 1906. WILLIAM L. BROWNING, 416 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. 13,520. Administration. [Seal.] 10-31

**Ralston & Siddons, Attorneys****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of William H. Wetzel, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of March, 1906. WILHELMINA C. WETZEL, 2185 H st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,528. Administration. [Seal.] 10-31

**J. Vincent Coughlan, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of James Mulloy, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of March, 1906. JAMES W. MCCHESNEY, 200 E. st. N.E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,480. Administration. [Seal.] 10-31

**Lambert & Baker, Attorneys****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia and the State of Pennsylvania, respectively, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Margaret Love Skerrett, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers on or before the 6th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 6th day of March, 1906. DAVID MILNE, School Lane, Germantown, Philadelphia, Pa.; FREDERICK WILLIAM MATTESON, 1706 Pat. N. W., Wash., D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,337. Administration. [Seal.] 10-31

**Legal Notices.****George E. Flemming, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.  
No. 12,825. Administration.**

**This is to Give Notice** That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Caroline Day, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Friday, the 6th day of April, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 6th day of March, 1906.

[Seal] **UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA**, by George E. Flemming, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. 10-31

**P. H. Marshall, Solicitor****In the Supreme Court of the District of Columbia.  
Henry B. Hutchinson v. Israel Little et al.  
Equity No. 26,056.**

The object of this suit is to establish the title of complainant, Henry B. Hutchinson, in fee simple, by the adverse possession of himself and those under whom he claims, to original lot numbered twenty-six (26), in square numbered nine hundred and fifty (950), in the city of Washington, District of Columbia. On motion of the complainant, by his solicitor, P. H. Marshall, it is, by the court, this 7th day of March, A. D. 1906, ordered that the defendants, Israel Little, if he be living, and the unknown heirs, devisees, and assignors of Israel Little, if he be dead, cause their appearance to be entered herein on or before the first rule day occurring three months after the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order to be published for three months, once a week for three successive weeks for the first month, and twice a month for each of the two succeeding months in The

Washington Law Reporter and The Washington Times. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. mar. 9-16-23, apr. 13-20, may 11-18

**Alfred D. Smith, Attorney****In the Supreme Court of the District of Columbia.  
Ella M. Reh v. John L. Reh et al.  
No. 24,741. Equity Docket No. 55.**

The object of this suit is to obtain absolute divorce on the ground of adultery. On motion of the complainant, it is, this 6th day of February, A. D. 1906, ordered that the defendants, Florence Mardiner and John L. Reh, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Providing a copy of this order be published once a week for three successive weeks in The

Washington Law Reporter and The Times. [Seal] By the court. HARRY M. CLABAUGH, Chief Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 10-31

**Children & Fenning, Attorneys****In the Supreme Court of the District of Columbia,  
Holding a Probate Court.****In re Estate of James Frame, Deceased.  
Adm. No. 12,685.**

William Hamilton, executor of James Frame, deceased, having reported to the court the sale of the real estate known as lot lettered A. in square number 725, in the city of Washington, District of Columbia, the same being improved by the house known as No. 129 C street, northeast, in said city, of which said decedent was seized and possessed at the time of his death, unto Walter I. Lemkey, for the sum of \$3,500.00 net cash, it is this 5th day of March, 1906, ordered, that said sale be ratified and confirmed unless cause to the contrary be shown to this court, on or before the 9th day of April, 1906; provided, that a copy of this order be published

[Seal] in The Washington Law Reporter once a week for three successive weeks before said last mentioned date. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. 10-31

Justice blanks of every description for sale at this office.

**Legal Notices.****Millan & Smith, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of James B. D. Meeds, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of March, 1906. BENJAMIN N. MEEDS, 1010 Pa. ave. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,525. Administration. [Seal.] 10-St

**E. H. Thomas, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Reuben B. Detrick, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 26th day of March, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 7th day of March, 1906. GEO. W. F. SWARTZELL, by E. H. Thomas, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,549. Administration. [Seal.] 10-St

**H. T. Taggart, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Bridged Wardell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of March, 1906. PETER J. MCINTYRE, 2534 K st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,536. Administration. [Seal.] 10-St

**E. F. Colloidy, Solicitor**  
In the Supreme Court of the District of Columbia.  
*Anna Page Brown v. William H. Brown and Eliza Jones.* No. 26,050. Equity Docket No. 58.

The object of this suit is to obtain an absolute divorce upon the ground of adultery. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and in The Washington Times. On motion of the complainant, it is this 9th day of March, A. D. 1906, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the

[Seal] first publication of this order; otherwise the cause will be proceeded with as in case of default. By the Court: HARRY M. CLABAUGH, Chief Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 10-St

**Hughes & Gray, Solicitors**  
In the Supreme Court of the District of Columbia.  
*Addie Jett White v. Arthur White.*  
No. 25,992. Equity Docket No. 57.

The object of this suit is to obtain an absolute divorce on the ground of adultery. On motion of the complainant, it is, this 8th day of March, A. D. 1906, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington

[Seal] Law Reporter and The Washington Bee once a week for three successive weeks. By the court: HARRY M. CLABAUGH, Chief Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 10-St

**Legal Notices.****John B. Lerner, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Eliza M. Higley, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Thursday, the 29th day of March, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 8th day of March, 1906. THE WASHINGTON LOAN AND TRUST CO., by Andrew Parker, Treasurer, by John B. Lerner, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,771. Administration. [Seal.] 10-St

**Hamilton & Colbert, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Frances A. Pleasant, Deceased.  
No. 13,170. Administration.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by Anne E. Pleasant, it is ordered this 6th day of March, A. D. 1906, that notice be and hereby is given to Annie Pleasant, and to all others concerned, to appear in said court on Monday, the 9th day of April, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] WENDELL F. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 10-St

**S. Herbert Giesy and Thomas James Meagher,  
Attorneys****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscribers, of the State of Pennsylvania and the District of Columbia, respectively, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of William Hogan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 7th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 7th day of March, 1906. LYNNDORAS LUCUS, 4315 Walnut st., Philadelphia, Pa.; HARRY C. BIRGE, 1326 N. Y. ave., Wash., D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,733. Administration. [Seal] 10-St

**Ellen Spencer Mussey, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Mary Emily Bates Cones, Deceased.  
No. 13,514. Administration.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by The American Security and Trust Company and Ellen Spencer Mussey, it is ordered, this 5th day of March, A. D. 1906, that notice be and hereby is given to Henry S. Bennett, a non-resident, and to all others concerned, to appear in said court on Monday, the 9th day of April, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] WENDELL F. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 10-St

# The Washington Law Reporter

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### False Representations as to Rental Value of Real Estate—Measure of Damages.

In *Ettlinger v. Weil*, decided March 6, 1906, by the Court of Appeals of New York, and reported in the New York Law Journal, the action was by a grantee of real estate, who claimed to have been deceived with respect to its fee value by reason of the false representations of the grantor as to the rental derived from a portion of the premises. The court holds that the measure of damages in such case is the difference between the market value, had the rental been as represented, and the actual value. In arriving at this difference the plaintiff may prove by expert testimony the market value of the property as it would have been had it in fact leased for the amount represented by the defendant. He should not, however, be allowed to fix the actual market value on the basis of the rental actually received for the part of the premises in question, that being an uncertain standard to apply to the whole property. In such a case, however, the defendant may prove what would be the fair rental value of the part of the premises in question, or that it was equal to what the defendant had represented it to be, upon the theory that, even if the representations were false, the plaintiff had suffered no damage.

### Physicians, Evidence of—Waiver of Patient's Privilege.

An interesting phase of the law with respect to the evidence of physicians, and the rule of privilege in relation thereto, is considered by the appellate division of the Supreme Court of New York in the case of *Clifford v. Denver and Rio Grande Railroad Company*, decided March, 1906, and reported in the New York Law Journal. The plaintiff sued to recover for injuries sustained while a passenger on defendant's train in Colorado, and after the case was at issue she caused the issue of a commission to take the testimony of a physician in Grand Junction, Colo., who had treated her professionally for the injury. Upon the trial of the case the plaintiff did not read the deposition, but it was read by the defendant as part of its case. The trial court, on the objection of the plaintiff, excluded questions and answers which gave the result of the physician's examination of the plaintiff; and this action of the trial court was assigned as error, the defendant claiming that the taking of the deposition by the plaintiff was a waiver of her privilege. By section 836 of the Code of Civil Procedure of New York, it is provided that a waiver of the privilege by the patient must be made in open court upon the trial, or by a written stipulation signed by the attorneys for the respective parties. The appellate division, affirming the judgment of the trial court, holds that the action of the plaintiff in taking the deposition did not constitute a waiver of her privilege; that the plaintiff not having read the deposition, when the defendant offered to read it it made the physician its witness, and the competency of the witness to testify was to be determined by the trial judge. Two of the justices dissented, holding that the privilege had been waived.

### Murder—Unintentional Homicide While Committing Felony.

In *People v. Huter*, decided March 13, 1906, by the Court of Appeals of New York, and reported in the New York Law Journal, the court construes the provisions of section 183 of the Penal Code of that State, declaring it murder in the first degree if the killing of a person is not excusable or justifiable when committed from a deliberate and premeditated design to effect the death of the person killed, or of another, or without a design to effect death by a person engaged in committing or attempting to commit a felony. It is held that—

One who has committed burglary and, on being detected, escapes from the building where he abandoned the property and while running

through the streets pursued by an officer suddenly turns and shoots the latter, causing death, may be found to have deliberately and premeditatedly designed the killing from having armed himself with a deadly weapon before breaking into the building and to be, therefore, guilty of murder in the first degree. But it is error to charge that, even if the killing was unintentional, the jury might find him guilty of murder in the first degree for having been engaged in the crime of burglary. As the shooting took place at a considerable distance from the building he could not be said at the time to be engaged in that crime. Nor could a conviction of murder in the first degree be sustained on the ground that the killing, under such circumstances, if unintentional, was committed while resisting an officer; inasmuch as the minor offense would be merged in the homicide with which he was charged. To constitute murder in the first degree, by an unintentional killing while engaged in the commission of a felony, the elements constituting the felony must be separate and distinct from the homicide, otherwise the lesser crime is merged in the greater; but the defendant may, by the same act, commit both crimes, as where the act causing death is committed with an independent felonious design.

#### Death of Mr. David H. Fenton.

Mr. David H. Fenton, a member of the Bar of this District, died on Sunday evening, March 25, 1906. While on his way to his apartments in this city he was stricken with heart disease, and death ensued immediately. Mr. Fenton was a member of the firm of Douglass & Douglass, and was highly esteemed by his associates in that firm and the members of the bar in general. He was a man of high character and a lawyer of ability. Mr. Fenton made his home in Maryland, and in addition to his professional duties was a member of the Legislative Assembly of that State. His recognized ability won for him the position of floor leader of the minority in that body. Recently he had been actively engaged in important duties as one of a committee charged with the investigation of certain railroad matters, and the exacting nature of those duties, it is thought, hastened his untimely death. In his death the State of Maryland loses a faithful and valuable official, and the Bar of this District a member who was greatly esteemed by all who were privileged to know him.

A notarial notice of protest of non-payment of a note, addressed to an indorser as if living when he is dead, is held, in *Bank of Ravenswood v. Wetzel* (W. Va.), 70 L. R. A., 305, to be good to charge such indorser's estate if actually received by his administrator.

## Court of Appeals of the District of Columbia.

GEORGE B. CORTELYOU, POSTMASTER-GENERAL, APPELLANT,

v.

HENRY O. HOUGHTON, TRUSTEE, ET AL.

INJUNCTION; UNDERTAKING; REFERENCE TO ASCERTAIN DAMAGES.

On a bill in equity filed by appellees to enjoin the Postmaster-General from canceling a certificate of entry admitting their publications to the mails at second-class rates, and to require him to receive and transmit them at such rates, the undertaking required by Equity Rule 42 of the court below was filed and a temporary injunction granted, which at the final hearing was made perpetual. On appeal by the Postmaster-General this decree was reversed by this court, and its ruling was affirmed by the Supreme Court of the United States. Thereupon the court below entered a decree dismissing the bill, but denied a motion by the defendant for a reference to ascertain the damages resulting from the injunction. On appeal from so much of the decree as denied the motion for a reference, held—

1. That the ruling of the court below refusing a reference for the ascertainment of damages was reviewable by this court, and that such ruling was erroneous, the facts set out in the pleadings showing that the measure of damages for which the complainants were liable on their undertaking was the difference between the second-class rate at which their publications were required by the injunction to be carried pending the litigation and the rate sought to be charged by the Postmaster-General, and which, as the result of the litigation, it was decided he had the right to charge.
2. That the bond given preliminary to the granting of the temporary injunction did not become inoperative upon the entry of the decree making that injunction perpetual, but continued in force until the termination of the litigation.
3. That the Postmaster-General, in his representative capacity, was entitled to recover as damages the difference between the two rates of postage; and the amount having been agreed upon by a stipulation between the parties, a decree for that amount directed to be entered against principals and surety in the undertaking.

No. 1607. Decided March 7, 1906.

APPEAL by defendant from so much of a decree of the Supreme Court of the District of Columbia, in Equity, No. 23,342, as denied a motion for a reference to ascertain damages suffered through the suing out of an injunction. Reversed.

*Mr. H. H. Glasie* for the appellant.

*Mr. Wm. S. Hall* and *Mr. Holmes Conrad* for the appellees.

Mr. Justice DUELL delivered the opinion of the Court:

This appeal is taken to review so much of a decree entered herein as denies appellant's motion for a reference to ascertain the damages suffered by appellant through the suing out of the injunction granted herein.

A brief history of the case is required for the proper understanding of the question presented by the appeal.

The appellees on May 31, 1902, filed their bill of complaint against Henry O. Payne, deceased, then Postmaster-General, asking that Mr. Payne, referred to in the complaint as holding the office of Postmaster-General, be enjoined from canceling the certificate of entry permitting certain publications of complainants to be transmitted at second-class rates, and requiring him to receive said publi-

cations and transmit them through the mail as mailable matter of the second class. Upon the same day the court below ordered that, upon complainants filing the undertaking required by Equity Rule 42, the defendant be restrained as prayed, "until further order, to be made, if at all, after a hearing which is fixed for the 16th day of June, at 10 o'clock a. m., 1902."

The injunction undertaking was filed the same day and is as follows:

"George H. Miffin, one of the complainants, and the American Surety Company, of New York, surety, hereby undertake to make good to the defendant all damages by him suffered or sustained by reason of wrongfully and inequitably suing out the injunction in the above-entitled cause, and stipulate that the damages may be ascertained in such manner as the justice shall direct, and that on dissolving the injunction, he may give judgment thereon against the principal and surety for said damages in the decree itself dissolving the injunction."

No hearing was had on June 16, 1902, and no further order was made until on March 10, 1903, when the case was heard on bill and answer, and the injunction was made perpetual. From such decree an appeal was taken to this court, which, on June 5, 1903, reversed the decree. 22 App. D. C., 234: 31 Wash. Law Rep., 390. An appeal was thereupon taken to the Supreme Court of the United States, the injunction being continued pending the appeal. On April 11, 1904, the decree of this court was affirmed by the Supreme Court. 194 U. S., 88.

George B. Cortelyou, who was on March 27, 1905, and still is, Postmaster-General, was on that day duly substituted as defendant. Two days thereafter the motion for the decree above referred to was filed.

A decree was granted July 7, 1905, and is as follows:

"This cause came on to be further considered upon the motion to enter a decree upon the mandate of the Court of Appeals, filed herein on June 6, 1904 (which is here produced to the court), and for a reference to ascertain the damages suffered by the defendant by reason of the wrongful suing out of the injunction herein, and was argued by counsel; whereupon it is, this 7th day of July, 1905, by the court adjudged, ordered, and decreed that the decree hereinbefore entered on March 10, 1903, be and the same, in obedience to said mandate, is hereby reversed and set aside; that the bill of the aforesaid complainants be and the same is hereby dismissed, with costs adjudged in the Supreme Court of the United States, the Court of Appeals, and in this court, and that the injunction heretofore granted be and the same is hereby dissolved.

"And the court, upon consideration of the bill and answer, and stipulation herein, is of the opinion that the complainants and the surety on the injunction undertaking given in this cause are not, as a matter of law, liable in damages thereon, and also that the defendant is not entitled to recover damages resulting from the injunction requiring him to receive the publications of the complainants and transmit same through the mails as mailable matter of the second class, and it is further adjudged,

ordered, and decreed that the motion for the ascertainment of damages upon such undertaking be and the same is hereby overruled and denied, and the injunction undertaking aforesaid be and the same is hereby canceled and annulled."

It is from such portion of this decree as denies appellant's right to an ascertainment of damages, etc., that an appeal was taken as above stated.

Appellant by his assignments of error urges that the court below erred:

"(1) In holding that the complainants and their sureties on the injunction undertakings are not, as matter of law, liable in damages thereon.

"(2) In holding that the Postmaster-General is not entitled to recover damages resulting to him as Postmaster-General from the injunction requiring the transmission of the publications of the complainants as second-class mail matter instead of third-class mail matter.

"(3) In holding that the defendant, as Postmaster-General, is not entitled to receive, under such injunction undertakings, the amount of postage which, as Postmaster-General, he was restrained from collecting.

"(4) In holding that the injunction undertakings were not liable for damages suffered between the original decree in the court below and the decree upon the mandate of this court setting aside such original decree.

"(5) In directing that such undertaking should be canceled and annulled."

The position of the appellees, on the other hand, as we understand it, is, first, that as it was within the power of the trial court to decide whether damages should be given the appellant, its action can only be reviewed if its judicial discretion has been improvidently exercised; second, that no damages can be recovered because no bond was asked or given on account of the injunction, which was finally vacated; and, third, that the damages sought to be collected are damages to the United States, which are not recoverable, because it was not and could not be a party to the action.

Before proceeding to the consideration of the alleged errors it should be said that a stipulation as to damages has been signed by counsel for the respective parties. It shows that the difference between the postage at the pound and third-class rates, between the filing of the injunction herein and June 16, 1904, when the injunction commenced to operate, amounted to the sum of \$6,880.86. The stipulation further provides "that such account may be taken as equivalent to all intents and purposes to a finding of fact of the auditor to the same effect upon a reference to ascertain what damages, if any, were suffered by the defendant by reason of wrongfully and inequitably suing out the injunction herein, the question whether such damages should be recovered being reserved for the determination of the court."

This stipulation obviates the necessity for a reference to ascertain the amount of damages.

Turning now to consider the contentions of the parties, it may be said that if the appellees are right in any one of the three points raised by them it must follow that the appellant's assignments of error are not well taken. Such



being the case, it will be best to examine the case from appellees' view point.

1. Should the decision of the trial court, refusing to order an accounting, or to give damages to the appellant, be reviewed by this court?

Ordinarily, where an injunction is vacated a reference is ordered to ascertain the damages. No damages may have been suffered, and, therefore, none may be recoverable, and yet so strong is the presumption that damages have been inflicted that a court rarely declines to order a reference. The argument upon which an appellate court has sometimes refused to disturb the ruling of the trial court that damages ought not to be recovered, and the bond prosecuted, is that the trial court has had the advantage of watching the conduct of the parties and the conduct of the litigation, and, therefore, is best able to determine the question. *Russell v. Farley*, 105 U. S., 433. But this reason is of little force where, as in the present case, the facts are set out in the pleadings upon which the hearing is had, and in due course the questions at issue come before the appellate court on appeal upon the merits. We see nothing in the present case to preclude us from reviewing the decision of the trial court. An undertaking given as a condition to the grant of an injunction means, and ought to mean, something. In the case at bar the question was as to what rate the appellees should have certain of their publications carried in the mails. True, they had had them carried for some years at a low rate. The Postmaster-General did not seek to compel them to pay the higher rate for the past, but only for the future. They disputed the correctness of his ruling, and in order to prevent him from enforcing it, they secured an injunction. They could have suspended the publication during the pendency of the litigation, or could have paid the additional postage under protest, and had they prevailed Congress undoubtedly would have given them relief. They preferred to give an undertaking, and the measure of damages if they lost their case was not problematical, but clearly was the difference between the two rates of postage. They forced the defendant, acting in his representative capacity and for the Government, to defend the action. They took the risks of litigation, and must have known what they were doing when they gave the injunction bond. If it were in reality, as in name, a contest between two individuals the appellees' contention would be at once brushed aside. We see no valid reason why a different rule should be applied because one of the parties is the representative of the United States. The people may be better able to stand the loss arising out of the grant of the injunction than would be an individual, but that is no reason for applying a different rule. As well might it be urged that the relative wealth of two litigants should control as to whether one who had been damaged should be indemnified. Because appellees had had their publications carried for years at a lower rate than they were entitled to is no valid reason why they should have that right pending litigation. When they gave a bond they must have known that they were assuming a liability. As well might an endorser of a promissory note plead that he never expected to be obliged to make

his endorsement good. We think there is little merit in this first objection to the enforcement of the undertaking.

2. The second ground urged by appellees is that no bond was asked or given on account of the injunction, which was finally vacated. In other words, that the injunction to obtain which they gave the bond in question ceased to be operative when the trial court signed the decree of March 10, 1903, which granted a perpetual injunction. Conceding the correctness of this contention, the appellees would still be liable for damages from May 31, 1902, to March 10, 1903, provided the general objection that the appellant is in no event entitled to recover damages be held not well grounded.

But we do not think the bond ceased to be in force after the decree was entered making the injunction perpetual. The parties, by their actions, treated it as though it continued to apply. The appellant would, had any question been raised, have asked for a new bond, in which event the appellees doubtless would have conceded that the bond remained in force. When the main case was before this court and later was taken to the United States Supreme Court it was considered that the original undertaking was in force or a new one would have been required—one other than the supersedeas bond then given.

Doubtless there may be found a class of cases where a final decree being entered, with a provision for a perpetual injunction, the bond given on the grant of a temporary injunction may not be held to be longer in force. This is not such a case, and the rules of the District Supreme Court are such that we think an injunction bond once given may continue until the termination of the litigation. Such was held to be the case in *Dodge v. Cohen*, 14 App. D. C., 582, 597: 27 Wash. Law Rep., 334. The facts in that case, while not identical with the facts of the case at bar, are so similar that we distinguish no material difference, so far as those facts relate to the injunction and bond. In that case a bond was given when an order was passed restraining the defendant from prosecuting certain suits at law, appointing receivers to take possession of the property in dispute, authorizing them to sell the same, and referring the cause to the auditor to state an account and distribute the proceeds of the sale. Some four years later a decree was entered, from which an appeal was taken. The decree was reversed, and on the going down of the mandate, a reference was ordered to ascertain and report the damages. It was contended on the part of the parties who had given the bond that damages could not be assessed for any time after the date of the final hearing from which the appeal was taken. Upon appeal to this court their contention was overruled. It was said, "The injunction remained in force, and as long as the injunction remained in operation the undertaking remained in force as a means of indemnity." We think that ruling is of equal force in the present case. The undertakings in both cases are almost word for word the same. Both injunctions were given before any decree was entered that was appealed from. The suit and the appeal are one proceeding, and until a final determination of the suit no action

can be successfully brought on an injunction bond, though the injunction may have been dissolved. *Gray v. Veirs*, 33 Md., 159, 160. We agree with the statement of appellant's counsel that, "The life of the injunction is from the date of its original issuance to the date of the dismissal of the bill, by which its unlawfulness was determined." The undertaking covers the same period. As was well said by the former chief justice of this court in *Hamilton v. State*, use of *Hardesty*, 32 Md., 354, where it was urged that a supersedeas appeal bond took the place of a prior injunction bond:

"Taking the appeal and giving the appeal bond as required by law had the effect of staying and suspending the operation of the order of dissolution, and of leaving the order granting the injunction in full force as if no order dissolving the injunction had passed. The defendant in those proceedings was not at liberty to proceed with the foreclosure of his mortgage or the collection of his rents during the pendency of the appeal; nor could he have sued the injunction bond after the order of dissolution, and before its affirmance by the Court of Appeals, for, after filing the appeal bond, and by that means staying and suspending the effect of the order of dissolution, the injunction was as operative as ever. . . . And, though the appeal bond was conditioned to prosecute the appeal with effect, and by breach of which the appellee became entitled to recover damages sustained by reason of the appeal, it is but *cumulative security* to the injunction bond, except as to the costs, on the appeal to which the appeal bond alone is chargeable."

3. It is further urged by appellees that the damages sought to be collected do not belong to the defendant, but to the United States, and that as it was not and could not be a party to the suit, no damages can be collected. We think the answer to this contention is a simple one. The appellant is Postmaster-General of the United States. His predecessor, against whom the suit was originally brought, was the then Postmaster-General, and the bill of complaint so alleges, so designates him in the caption, and the answer admits it. Had he been sued as *Henry C. Payne*, with no averment as to his office, or as to his interest, duties, or powers in the premises, the bill would have been dismissed. He was made defendant because he was Postmaster-General, and because, in pursuance of authority claimed by him as Postmaster-General, he had given notice that he, in his official capacity, would do certain things which these appellees considered to be unlawful and against their personal interests. *Henry C. Payne*, the individual, had no more interest in the matter than any other citizen of the United States. The suit was against him in his official capacity; otherwise his successor in office, the present appellant, would be without standing and an intruder. *Payne's* executors or administrators could not have been substituted as defendants upon his death, for they were not authorized to collect and disburse the postal revenues. That duty devolved upon his successor in office. We think it is begging the question to say that the United States was not a party to the suit and could not be. That in one sense is true, but the courts have recognized

that there is a class of cases where it is absolutely essential in the interests of justice that actions should in some form lie, in reality though not in name, against the United States, and therefore they have permitted such actions to be brought against the executive officers of the United States to prevent them from doing, or to compel them to do, something in their representative capacities which in reality affects the Government's interest and in which the Government's officer has no personal interest. This is one of those cases. It is the duty of the Postmaster-General to collect the postal revenues. When collected they are used to defray the expenses of the service. Appellant's counsel has referred to the statutes governing the duties of the Postmaster-General and has summed up such duties most clearly. He says:

"These postal revenues remain a distinct fund and are denominated 'deposits.' The postal service is maintained out of its own revenues. All expenditures not settled directly by postmasters are made by warrants of the Postmaster-General drawn upon this fund of the postal revenues, and only when the postal revenues are insufficient to meet the current expenses does the Postmaster-General make a requisition upon the Treasury pursuant to the appropriations provided to meet such deficiencies. The amount is then placed to the credit of the Post-office Department and transferred by the Postmaster-General to such assistant treasuries as may be necessary. Thus it will be seen that the postal revenues, even after collection, constitute a separate, distinct, and identifiable fund of which the Postmaster-General is the supreme administrator, and which is not only collected but disbursed by him."

The conclusion he draws therefrom is logical and convincing, and we quote it:

"It was as administrator or trustee of these revenues that the Postmaster-General was enjoined at the instance of the complainants, upon the theory that he was about to make an unlawful charge which would inure to the benefit of those revenues. Just as the complainants upon that statement of the case were entitled to a remedy against the agent doing the supposed wrongful act, so are they bound to indemnify that agent for the effect of that remedy when the act turns out not to be wrongful at all. It would be contrary to the most elementary principles of justice that the complainants, asserting a right against the defendant in one capacity, could escape the consequences of the assertion of that right upon the plea that because it turns out that their claim of right was unfounded, they may insist that they sued the defendant in another capacity. The relief and the indemnity were reciprocal and commensurate. The Postmaster-General was sued in his official capacity; he thereby suffered damage in his official capacity; must he not be made good in his official capacity?"

It was, as we have seen, his duty to collect from the appellees the postage due from them. To wilfully fail to do so would have been negligence upon his part. When he was enjoined from making the collections it was his bounden duty to protect himself and the United States, whom he represented, just as it is the duty of any trustee or other person acting in a repre-

sentative capacity. He is under obligations to collect and credit the United States the postage withheld from him by these appellees. He has no power to excuse them from such payment. Nay, more, there is a duty imposed upon him to use all lawful means to enforce their collection. When this postage was kept from him he was damaged, and being damaged he was entitled to indemnity. The undertaking was given for his protection, and to enable him, if his position was legal, to collect for the Government, which he represented, the postage which through his representative, the postmaster, he was under a legal obligation to account for.

In his representative capacity, and as against these appellees, he is entitled to the withheld postage as damages. True, he must account to the United States for them when collected, but until he receives them he can not turn over the amount of damages received. It seems to us his position is analogous to that of the defendants in *Andrews v. Glenville Woolen Co.*, 50 N. Y., 282. It seems that judgments were recovered in the name of the Glenville Company by persons claiming the right to use its name for that purpose. The defendant company was restrained from enforcing the judgments, the plaintiff giving an undertaking. The bill being dismissed, a reference was had to ascertain the damages, and it was contended, as here, that, as the defendant company had no interest in the result, it had sustained no injury. The court said: "If this objection was valid, it shows that the undertaking had no force or effect whatever, and that a party who is prosecuting a claim according to law, in the name of another person, may be enjoined in fact, though not by name, without having the indemnity which the Code purports to provide, in case it should result that there were no grounds for the injunction. Such a conclusion should not be drawn unless clearly required by law, for it would be not only exceedingly unjust to the party whose proceedings are enjoined, but would also liberate the applicant for the injunction from the wholesome condition which the law imposes upon him of giving security for the damages he may occasion, should his claim prove to be without foundation. It seems to me to be more reasonable to hold that when proceedings, conducted by one party for his own benefit in the name of another, are restrained by an injunction not directed to the party in interest by his name, the damages and expenses incurred by him in procuring the discharge of the injunction should be presumed in law to have been incurred by the defendant on the record, and should be recoverable in his name for the benefit of the real party in interest."

To the same effect is the case of *Oelrichs v. Spain*, 15 Wall., 211. Spain enjoined, in a certain proceeding, one Wetmore from dealing with a certain fund which he held as custodian or trustee for certain persons, one of whom, Hill, was not a party to the bill. Spain's bill was finally dismissed. Hill's child, who was his heir and legatee, filed a bill thereafter to assert his father's claim for damages occasioned by the granting of the injunction, and the securities on the bond given in the Spain case were made defendants. A similar contention was made as

in the case at bar. The court at page 229 said:

"It is true that neither Hill nor his representatives were parties to the bond of May or the bond of Oelrichs, and that they were not named in the writ of injunction upon the filing of the first bond. But Spain's bill averred that Wetmore held the fund in trust for Hill. Wetmore was an obligee in both bonds. The legal title to the entire fund was in him and was never divested. . . . Wetmore, during his lifetime, and after his death his legal representatives, might have recovered upon the bonds at law to the full extent of the damage touching the entire fund. Such was his and their legal right."

We can see no reason why the principle laid down in these cases does not apply, even though the United States, and not an individual, is the party who is ultimately benefited by receiving the damages admitted to have been suffered through the issue of the injunction. Concluding, therefore, that the appellees' position is untenable, it follows that the appellant's assignments of error are well founded. Without further extending the scope of this opinion to include questions raised, but which, in our opinion, are not relevant or necessary to the determination of the case, we conclude that the court below was in error in holding that as a matter of law the appellant was not entitled to damages, and in releasing the appellees and their surety from the obligations of the injunction undertaking, and in refusing to order a reference to ascertain the damages. As the amount of the damages has since been stipulated it will be unnecessary to order a reference.

So much of the decree as was appealed from is reversed, with costs, and the court below is directed to enter a decree against complainants, and the surety upon the injunction bond, for the sum of \$6,880.88, with interest from July 7, 1905.

Reversed.

Same—Wife not Agent as to Options in Policy—Domestic Relations Law (New York) Section 22.—Section 22 of the Domestic Relations Law of New York does not make the bankrupt the agent of the wife as to the options given the husband in such a policy; but a bankrupt may not only be required to assign to the trustee his interest in such a policy, but also may be required to execute a power of attorney to exercise such options at and after the expiration of the tontine period. *Matter of Phelps*, 15 Am. B. R., 170.

Master and Servant—Fellow Servants.—Under the law of Tennessee, crews on freight and passenger trains held fellow servants up to the occurrence of a certain accident, at which time the conductor of the freight train became a vice principal of the railroad. *Cincinnati, N. O. & T. P. Ry. Co. v. Ourd* (Ky.), 89 S. W. Rep., 140.

Mortgage—Sale by Mortgagee.—A mortgagee, selling mortgaged property on default of the mortgagor under power of sale, is bound to conduct it so as to produce the best price. *Aultman & Taylor v. Meade* (Ky.), 89 S. W. Rep., 137.

## Supreme Court of the District of Columbia.

MOLLY ELLIOTT SEAWELL,

v.

A. S. ABELL COMPANY, OF BALTIMORE CITY.

LIBEL; EXCESSIVE DAMAGES; NEW TRIAL.

In an action for a libel, where, notwithstanding an instruction authorizing the jury to award punitive damages if they found the publication was made recklessly and carelessly was refused, and the jury instructed to render a verdict for compensatory damages only, a verdict in favor of the plaintiff for \$3,000 was returned, held that the verdict was excessive, and a motion by the defendant for a new trial granted.

No. 47,568. Law. Decided March 23, 1906.

HEARING on a motion for a new trial in an action for libel. Granted.

Mr. J. J. Darlington, Mr. F. S. Bright, and Mr. W. C. Sullivan for the motion.

Mr. A. S. Worthington and Mr. Chas. W. Clagett opposed.

Mr. Justice BARNARD delivered the opinion of the Court:

In this case the plaintiff filed a declaration in which she avers that the defendant is the publisher of a newspaper in Baltimore known as "The Sun," which has a large circulation in the District of Columbia, Maryland, and Virginia, and in which localities she has many acquaintances and enjoys the good opinion of her neighbors and other worthy citizens, and had a well deserved reputation in said States and District as a playwright and author; and that on September 4, 1904, the defendant published in said newspaper, of and concerning her, a certain article, which she avers to be libelous, and which she avers charges her with being guilty of a misdemeanor involving great moral turpitude, and with intent to defraud the revenues of the United States by attempting to smuggle into the United States certain paintings or portraits which were subject to duty by law, without paying or accounting for the duty thereon; and without submitting said dutiable articles to the revenue officers for their examination; and without declaring the same as required; and by having said paintings shipped along with some clothing, and entered as "wearing apparel and personal effects," to her great damage; that the said publication caused her great grief and trouble of mind, and affected her eyesight, caused her to shed tears on many occasions, thereby impairing her already weakened eyes; and she also avers that by reason of said publication divers persons, to whom the innocence of the said plaintiff was unknown, have since then wholly refused, and still do refuse, to have any transactions with her in her profession or otherwise, as they were used and accustomed to have, and otherwise would have had.

The article complained of, without the innuendoes contained in the declaration, is as follows:

"SOCIETY IN WASHINGTON.

Miss Seawell's Experience With Our Tariff System.

[Special dispatch to the Baltimore Sun.]

Washington, September 3.—Miss Molly Elliott Seawell, authoress and playwright, has

brought over some valuable paintings, collected during her summer trip abroad. It now appears that she had little respect for the duty required by Uncle Sam on works of art, and had the paintings shipped along with some clothing and entered as 'wearing apparel and personal effects.' Now, articles of apparel are seldom shipped in the slim, unmistakable picture boxes, and the customs officer at Georgetown, at which port they were received, made a careful examination. He decided that foreign paintings were not properly classed as 'personal effects,' and levied a heavy duty on them. Miss Seawell was very indignant, and appealed, but has been refused a hearing, the case having been dismissed by the board of general appraisers in New York."

The plaintiff claims that she has been damaged in the sum of \$25,000 by this publication, and asks judgment therefor.

The defendant filed a plea of "not guilty," and the case was tried before a jury, who rendered a verdict in favor of the plaintiff for \$3,000. The defendant thereupon filed a motion for a new trial, claiming as grounds therefor that the verdict was contrary to evidence, and contrary to the weight of evidence; that there were errors of law during the trial, and that the damages were excessive.

At the trial the plaintiff asked for an instruction entitling her to punitive damages against the defendant, if they should find that the publication was made carelessly and recklessly. This was refused, and the jury were instructed to render a verdict for compensatory damages only.

It did not appear in the testimony that the officers of the defendant corporation had any knowledge of the publication until after it was made; and the evidence clearly showed that the reporter and editor, who were responsible for it, had no actual malice against the plaintiff, but that they had prepared the article and caused its insertion in the paper as a matter of interesting news, in the ordinary course of their business, without any intention of reflecting upon the good character and well-deserved reputation of the plaintiff.

During the progress of the trial it was established that the plaintiff was a person of good reputation, as claimed in her declaration; that she enjoyed the confidence and esteem of many good people in the District of Columbia, and in Virginia and Maryland; and there was no evidence that any one had thought any less of her by reason of the said publication; and there was no evidence that any one had refused to have transactions with her in her profession by reason of said libel, as stated by her in her declaration, so that her allegation in that respect was unproved.

There was proof tending to show that she was grieved, vexed, mortified, distressed, and harassed by the said publication, causing her to shed tears more or less; and there is evidence tending to show that excessive weeping would have had a tendency to further injure and impair her eyesight, for which she was being treated by a specialist before the date of the said publication.

The character of this publication was commented upon by counsel in the course of the

trial, the tendency of the argument being to construe the said article in accordance with the innuendoes contained in the declaration, so that it not only brought the plaintiff into ridicule, but so that it charged her directly with an attempt to violate a statute or statutes of the United States, which would subject her to imprisonment or a fine; and in the argument to the jury such references were made to the original draft of the said article, and to its revision by one of the editors of the defendant, as would be calculated to prejudice the mind of the jury against the said reporter and editor, if not against the defendant company, and to induce them to attribute improper motives to the defendant, and which remarks, it seems to me, were not warranted under the court's instruction excluding from the jury the right to assess punitive damages.

The court has no reason to change its ruling in that respect; and the amount of the verdict can not be accounted for in any other satisfactory manner by the court than by the supposition that the jury, notwithstanding the refusal to allow them to consider punitive damages, nevertheless did so, and allowed the same to increase their finding.

In this connection it is proper to look at the publication as made, and endeavor to see how it would strike the minds of the reading public.

Anything published about another which tends to impeach his reputation for honesty, integrity, or virtue, or which tends to expose him to public hatred, contempt, or ridicule, or to cause him to be shunned or avoided, or tends to injure him in his office, business, or occupation, is libelous, and, unless such publication is justified, will support an action for damages; but the damages which are to be recovered in such a case, in the absence of any actual malice, are compensatory only, and such as must naturally and proximately result from defamation caused by the publication in question.

Of course, it is not necessary in order to maintain the suit that actual malice, or express malice, should be shown; but every citizen has a right to keep his good name and fame, and if a libel is published about him, the law allows the presumption that it was done maliciously; that is, intentionally, and with knowledge upon the part of the publisher that it might be injurious to him.

Notwithstanding such presumption, it is always competent for the defendant in such a case to explain the circumstances surrounding the publication, in order to reduce the amount of the plaintiff's probable recovery; and anything that may properly tend to show that the plaintiff's injuries were less than claimed may be proven by the defendant; and the defendant may also show that he did not originate the defamatory charge, but merely repeated the same after hearing it from some one else; or that it was a matter of common rumor or report; or that it was published through inadvertence or mistake. Such mitigating circumstances, however, do not constitute a defense, and are only competent in case they throw some light on the question of the alleged libel, or the actual amount of injury and damage which the plaintiff has sustained by the publication. The

character of the publication must always have much to do with the injury which may be presumed to result from it.

In the absence of proof, what injury to the plaintiff's reputation can the jury be allowed to presume from the character of the publication in this case?

The article in question says that the customs officer decided that foreign paintings were not properly classed as "personal effects," and levied a heavy duty upon them.

From this decision, the article plainly states, the plaintiff took an appeal, and that the board of general appraisers dismissed that appeal and refused her a hearing.

This language can not be construed to mean in itself anything more than that there was a dispute between the plaintiff and the customs officer, as to whether these pictures were subject to duty or not; and that in that dispute the plaintiff had received an adverse decision.

If that had been all there was in the article, it could not possibly have been libelous; and the controversy between the officers and the plaintiff, being a dispute as to duties, no one who would read the whole article would be likely to understand that a crime had been imputed to the plaintiff.

There is another line in the article which says the plaintiff had "little respect for the duty required by Uncle Sam on works of art," and that would indicate that it was a question of duty or no duty that was the subject of the controversy, and not that any attempt had been made to conceal or smuggle. What is contained in the article which makes it libelous will be found, if at all, in the statement that the plaintiff had "paintings shipped along with some clothing, and entered as wearing apparel and personal effects," and in the further statement that "wearing apparel is seldom shipped in the slim, unmistakable picture boxes."

These statements might induce a casual reader to receive an impression that the plaintiff was undertaking to deceive the customs officer in the manner of packing and marking the pictures; but the article also clearly shows that the officer was not deceived, and that the real controversy was not an attempt to deceive, conceal, or smuggle, but a dispute as to whether the pictures were dutiable or not.

Damage to the plaintiff's reputation, in the absence of any proof that the same had been damaged in fact, can not properly be inferred to the extent of \$6,000 from the publication of such an article as that contained in the declaration. Neither can the amount be properly based on the proof as to the injury caused to the eyes of the plaintiff; nor is it justified by the injury shown by the evidence as to the plaintiff's feelings, or any suffering caused to her by the publication.

On none of these grounds is the evidence sufficient to warrant the finding of \$6,000 damages as compensatory damages; and if all the grounds were considered, and some substantial damages might be properly allowed, the amount found by this verdict is too great, in my judgment, to be permitted to stand.

As it is the duty of the jury, and not that of the court, to ascertain the proper amount which should be allowed; and as the court is of the

opinion that the jury has been misled in this case by the discussion between counsel and court, and in the argument of counsel, on the subject of punitive damages, so that the verdict is for that reason probably enlarged to an indefinite degree, and is contrary to the instructions given, it logically follows that the verdict should be set aside and the parties allowed to have a new trial. The motion for a new trial will therefore be granted.

**Supreme Court of the District of Columbia,  
HOLDING A PROBATE COURT.**

**ESTATE OF CHARLES H. SMITH.**

**WILLS; CAVEAT; FRAMING ISSUES; LEGAL EFFECT OF INSTRUMENT. PROBATE COURT WITHOUT POWER TO PASS UPON.**

1. When an instrument testamentary in form is offered for probate, it is for the Probate Court to determine whether it has been properly executed, whether the decedent had the requisite mental capacity to execute it, and whether it was procured to be executed by fraud or undue influence.
2. But if the paper was duly executed, and if decedent was competent to execute it, and if it was his free and voluntary act, then it must be admitted to probate, whatever may be the legal effect of the instrument, and even although it can have no operation whatever in law.
3. On a caveat to a will, issues proposed by the caveator as to whether the paper was executed upon an illegal consideration, namely, the violation of the act prohibiting adultery, and whether it was executed in pursuance of an agreement between deceased, then a married man, and a person named, the beneficiary under the will, to live together as husband and wife, and that said will should be executed in consideration thereof, rejected, for the reason that, admitting that an instrument based upon such a consideration is inoperative as a will, the Probate Court is without power to pass upon the legal effect of the instrument.

No. 13,385. Decided March 19, 1906.

**HEARING** in the matter of framing issues upon a caveat to a last will and testament. Certain proposed issues rejected.

*Mr. Charles H. Merrilat* for the caveators.

*Messrs. Wilson & Barksdale* for the caveatees.

**Mr. Justice STAFFORD** delivered the opinion of the Court:

A caveat has been filed to the will of the deceased, and the question is whether certain issues proposed by the caveator are proper to be submitted to the jury. Six issues are proposed. The first four relate to the formal execution of the will, the testamentary capacity of the decedent, to the question of undue influence, and the question of fraud in procuring the execution of the will. The fifth and sixth relate to a different matter, and are as follows:

"Fifth. Was said paper writing executed upon and for or in consideration of an illegal consideration, namely, violation of the act prohibiting adultery in the District of Columbia?"

"Sixth. Was said paper writing executed upon and in pursuance of an agreement between Charles H. Smith, deceased, then a married man, and [a person named] the beneficiary under the alleged will, to live together as husband and wife, and that said Charles H. Smith should execute said will and devise his estate to said [person named] in consideration thereof?"

It is contended on the part of the caveator

that these are proper issues to be submitted, because if the questions shall be answered in the affirmative the instrument propounded must be held by the court to be of no validity, and therefore not entitled to probate. Admitting that an instrument based upon such a consideration can have no operative force as a will, does it follow that it must, or can, be denied probate?

On the part of the proponent it is contended that the Probate Court is not called upon and has no authority to pass upon the legal effect of the instrument in order to determine whether it is entitled to probate, provided it is testamentary in form.

When an instrument is offered for probate it must appear upon its face to be of a testamentary character in order that the court shall be called upon to determine whether it is entitled to probate. If it is testamentary in form, then the question arises whether it has been properly executed. That is unquestionably for the Probate Court to determine. It is also for that court to determine whether the decedent had the requisite mental capacity to execute a will at the time when he executed the instrument in question. If objection is made that the instrument was procured to be executed by fraud or undue influence, that question is also to be determined by the Probate Court, because if the instrument was procured to be executed by either of those means it does not represent the free and voluntary act of the decedent and is not his will. But if the paper was duly executed, and if the decedent was competent to execute it, and if it was his free and voluntary act, then it must be admitted to probate, whatever may be the legal effect of the instrument and even although it can have no operation whatever in law. It may be that there is no property whatever to pass by its terms. It may be that it undertakes to do what the law will not permit to be done. It may be that its terms are so doubtful that it will require the construction of other courts, or it may be so unintelligible that no court can give it any construction that can be carried into effect. Nevertheless, it must be admitted to probate. The line is sharply drawn between those objections which relate to execution, testamentary capacity, undue influence, and fraud, on the one hand, and those objections, on the other, which relate only to the legal effect of the instrument. The former are to be determined by the Probate Court; the latter are to be raised and determined after the instrument is admitted to probate.

Counsel for the caveator has failed to cite a single case in which an issue of this kind has been submitted to the jury as preliminary to the probate of a will. On the other hand, counsel for the proponent have cited many cases and the acknowledged authorities among text writers supporting the distinction we have just drawn. We refer to some of them.

When the will of a married woman is propounded for probate the Probate Court does not decide upon the right of disposal, but merely upon the factum of the instrument. *Michael v. Baker*, 12 Md., 168.

When the law confers testamentary capacity upon married women with respect to their separate property the court does not stop to

inquire whether the property disposed of by the will of a married woman was her separate property in order to determine whether the will should be admitted to probate. *Toppendun v. Walsh*, 1 Phillimore, 352.

The Probate Court does not determine the right of disposal. *Buchanan v. Turner*, 26 Md., 4.

A statute made the consent of the husband necessary to the validity of a will of a married woman. Such a will was contested on the ground that it was executed without the husband's consent. The reply was that the property disposed of had been acquired by her before the enactment of the statute. It was held that a controversy of this character could not be settled by way of objection to the probate of the will, but must be remitted to other tribunals. It was said that a will executed by a married woman professing to dispose of her property must be admitted to probate like that of any other person. *Scull v. Murray*, 32 Md., 15.

The courts in this jurisdiction have held that upon the probate of the will of a married woman objection could not be raised that the will was made without the assent of the husband, nor that the decedent died possessed of no property upon which the will could operate. *Emmons v. Garnett*, 7 Mack., 57.

A will must be admitted to probate if it fulfils the other requirements, although the construction that must be given to it will make it inoperative in fact. *Vestry v. Bostwick*, 8 App. D. C., 452; 24 Wash. Law Rep., 310; *Estate of Cobb*, 49 Cal., 600; *Broe v. Boyle*, 108 Pa. St., 83.

A will contest can not be made the means of trying the validity of devises. Page on Wills, 376.

"If the will be properly executed, it must be admitted to probate, although it contain not a single provision capable of execution or valid under the law. Hence, probate does not establish the validity of any of its provisions; this is to be determined by the courts of construction." 1 Woerner's Adm., 502; Id., 485; Page on Wills, 408.

Our conclusion is that the fifth and sixth issues can not properly be submitted, and it is ordered accordingly.

A railroad company which, expressly or by implication, invites its passengers to use a stile over a wire fence in leaving its grounds is held, in *Cotant v. Boone Suburban R. Co.* (Iowa), 69 L. R. A., 982, to be bound to use at least ordinary care in seeing that it is fit for the purpose intended, although the stile was not erected by it, and the defective part is not on its property, but on property where it has no right to go to make inspection or repairs.

That a note for the payment of which a married woman becomes surety is made payable in a State where such contract is invalid, is held, in *Garrigue v. Keller* (Ind.), 69 L. R. A., 870, not to defeat her liability, although the suit is brought in that State, if the contract was valid at her domicile where it was executed.

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**Principal and Surety—Construction of Contract.**—The contract of a surety is to be given no retroactive effect, so as to cover past delinquencies, unless it in express terms provides that it shall have that effect. *United States Fidelity & Guaranty Co. v. Fultz* (Ark.), 89 S. W. Rep., 93.

The liability of a husband for the support of his wife at an asylum for the insane, to which she has been removed by due process of law, is denied in *Richardson v. Stuesser* (Wis.), 69 L. R. A., 829, in the absence of a statute expressly imposing such liability.

The occupant of the lower floors of a building, who blocks the stairway leading from the upper floor to the ground, so that a tenant of such floor, in seeking to escape a fire, is compelled to drop a considerable distance to reach the ground, is held, in *Oohn v. May* (Pa.), 69 L. R. A., 800, to be liable for the injury resulting to him therefrom.

**Landlord and Tenant—Cancellation of Lease.**—In a suit to cancel a lease, the contract held executed as to the part of the term which had expired, so that the lessor was not required to tender rent paid, as a condition to cancellation. *Isom v. Rex Crude Oil Co.* (Cal.), 82 Pac. Rep., 317.

**Life Insurance—Suicide.**—Suicide by insured while unconscious that he was taking his life, owing to mental disease, held not suicide within a clause of the policy exempting the insurer from liability therefor. *Masonic Life Assn. of Western New York v. Pollard's Guardian* (Ky.), 89 S. W. Rep., 219.

**Limitation of Actions—Interruption of Statute.**—The statute of limitations is not tolled by the allowance of a dividend from an assigned estate and the payment of it by the assignee. *Walter A. Wood Mowing and Reaping Machine Co. v. Harris* (Pa.), 61 Atl. Rep., 996.

**Limitation of Actions—Operation on Defense.**—The statute of limitations applies alone to plaintiff's cause of action, and so long as the courts will hear plaintiff's case, time can not bar the defense. *Aultman & Taylor Co. v. Meade* (Ky.), 89 S. W. Rep., 137.

The granting of an absolute divorce is held, in *re Jones* (Pa.), 69 L. R. A., 940, not to revoke, by implication, a legacy in the will of the husband in favor of the wife. The other cases on effect of divorce to revoke gift by will are collated in a note to this case.

That replevin lies for growing strawberry plants, although they are attached to the soil, is declared in *Cannon v. Mathews* (Ark.), 69 L. R. A., 827, since they are fruits of industry, and must be treated as chattels.



The payment of less than is due is held, in *Dreyfus v. Roberts* (Ark.), 69 L. R. A., 823, to discharge the debt when an agreement to that effect is fully executed, and the discharge is evidenced by a written receipt for the lesser sum in full satisfaction of the greater one.

An election to treat the original contract as still in force, upon notification of reduction in the amounts of certificates in a mutual benefit society, adhered to for two years and five months, is held, in *Supreme Council A. L. of H. v. Lippincott* (C. C. App., 3d C.), 69 L. R. A., 803, not to be subject to change, so as to permit a certificate holder to treat the contract as rescinded, and sue for assessments paid.

The failure to box, or otherwise protect, a rapidly revolving upright shaft coming up through the floor in an alley or passageway where an inexperienced girl is required to sweep, who is not warned of the danger, is held, in *American Tobacco Co. v. Strickling* (Md.), 69 L. R. A., 909, to be properly found by the jury to constitute negligence which will render the employer liable for injuries to her when her clothing is caught and wound upon the shaft.

**Bankruptcy—Discharge Bars Action on Provable Debt.**—A claim for damages alleged to have been sustained by plaintiff in consequence of specified false and fraudulent representations, alleged to have been made by the firm of which the defendant is the survivor, to the representatives of two mercantile agencies concerning the assets and financial responsibility of the firm, upon the strength of which the mercantile agencies issued reports by which the plaintiffs claim they were deceived into selling defendant's firm goods which they would not otherwise have sold to it, is a provable debt under 63a of the Bankruptcy Act, 1898, and defendant's discharge obtained before an action was commenced upon such claim is a defense. *Tindle v. Birkett*, 15 Am. B. R., 179.

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1702

Liability upon a fidelity bond which insures against loss through the fraud or dishonesty of an agent is held, in *Orion Knitting Mills v. United States Fidelity & G. Co.* (N. C.), 70 L. R. A., 167, not to cover failure to pay for goods purchased by a factor or broker, although the application and letter of advice stated that the applicant wished the bond to cover the liability of one who was engaged in an agency or commission business, and who desired a credit with applicant.

### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

### Legal Notices.

#### FIRST INSERTION.

Julius I. Peyser, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

**This is to Give Notice** That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Hennie V. Prince, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 16th day of April, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies, or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 28th day of March, 1906. ABRAHAM D. PRINCE, by Julius I. Peyser, Attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,778. Administration. [Seal.] 13-31

Supreme Court of the District of Columbia,  
Holding a Probate Court.

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Joseph Stump, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 16th day of April, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 28th day of March, 1906. CHAS. H. BAUMAN, Executor. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,647. Administration. [Seal.] 13-31

Richard A. Ford and J. J. Wilmarth, Attorneys

In the Supreme Court of the District of Columbia,  
Holding an Equity Court.  
Charlotte M. Pace, Complainant, v. Albert E. Pace  
and Pearl Baker, Defendants.  
Equity. No. 28,068.

The object of this suit is to obtain an absolute divorce upon the ground of adultery. On motion of the complainant, it is this 28th day of March, A. D. 1906, ordered that the defendants, Albert E. Pace and Pearl Baker, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post. By the Court, WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 13-31

**Legal Notices.**

**John B. Larner, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Washington Loan and Trust Company v. Charles W. Smiley, William H. W. Goodwin.**  
 No. 24,067. Equity Docket No. 58.

The object of this suit is to foreclose mortgage on lot numbered one hundred and thirty-seven (137) of Chapin Brown's subdivision of Mt. Pleasant, District of Columbia, and for the appointment of trustee to make sale thereof. On motion of the complainant, it is this 26th day of March, A. D. 1906, ordered that the defendant, Charles W. Smiley, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for

[Seal] three successive weeks in The Washington Law Reporter. By the Court: HARRY M. CLABAUGH, Chief Justice. True Copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 18-3t

**Wm. A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary Knox Linn, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 23d day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 27th day of March, 1906. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary; WILLIAMS, KNOX. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,001. Adm. [Seal.] 18-3t

**Fred McKee, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of John A. Wineberger, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 23d day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of March, 1906. ANDREW H. RAGAN, 1223 11th st. N. W.; WILLIAM C. FLENNER, 1188 Euclid st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,524. Administration. [Seal.] 18-3t

**J. Arthur Lynham, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Louise Depolloy Pollet, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23th day of March, 1906. J. ARTHUR LYNHAM, Columbian Building. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,152. Administration. [Seal.] 18-3t

**Blair & Thom, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Augustine Heard, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23th day of March, 1906. AUGUSTINE A. HEARD, 58 No. Pearl st., Albany, N. Y. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,364. Administration. [Seal.] 18-3t

**Legal Notices.**

**P. H. Marshall, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of James W. Reardon, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of March, 1906. FRED R. WALKER, 139 Todd Place N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,568. Administration. [Seal.] 18-3t

**S. Herbert Giesey, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Louisa D. Lovett v. Hilliard Owen.**  
 In Equity. No. 23,878. Docket 58.

ORDER NISI.

This cause came on to be heard at this term upon the report of S. Herbert Giesey and Corcoran Thom, the trustees herein appointed by decree to sell lot forty-three (43) in Brainerd H. Warner's subdivision of lots in "George Truesdell's addition to Washington Heights," as per plat of said Warner's subdivision recorded in Liber County No. 11, folio 95, of the records of the office of the surveyor of the District of Columbia; that they have sold the said lot and improvements thereon subject to a 1st deed of trust securing \$3,500, for twenty-four hundred and fifty dollars (\$3,450); and thereupon, upon consideration thereof, it is, this 24th day of March, 1906, ordered, adjudged, and decreed as follows: That the said sale be ratified and confirmed unless cause to the contrary be shown on or before the 28th day of April, 1906. Provided a copy of this order be published once a week for three successive weeks before the last-

[Seal] mentioned date in The Evening Star and The Washington Law Reporter. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clk. 18-3t

**E. H. Thomas and James Francis Smith, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding a District Court.**

**In the Matter of the Extension of Rittenhouse Street from Broad Branch Road Westward to District Line in the District of Columbia.**  
 District Court, 874.

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of an act of Congress approved March 8, 1905, entitled "An act for the extension of Rittenhouse street and for other purposes," have filed a petition in this court praying the condemnation of land necessary for the extension of Rittenhouse street from Broad Branch Road westward with a width of ninety feet to the District line as shown on a plat or map prepared by the said Commissioners and annexed to their said petition, and marked "Exhibit D. C., No. 1," and praying, also, that a jury of seven judicious, disinterested men, not related to any person interested in these proceedings, and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States marshal for the District of Columbia to assess the damages each owner of land taken may sustain by reason of the extension of said street and the condemnation of the land necessary for the purposes of such extension, and to assess the benefits resulting therefrom, as provided in the aforesaid act of Congress. It is, by the court, this 23d day of March, A. D. 1906, ordered, that all persons having any interest in these proceedings be, and they are hereby, warned and required to appear in this court on or before the 10th day of April, A. D. 1906, at 10 o'clock, and to continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be summoned herein; and it is further ordered, that a copy of this notice and order be published once in The Washington Law Reporter, and on six secular days in The Evening Star, The Washington Post, and The Washington Times, newspapers published in said District, before the said 10th day of April, A. D. 1906. It is further ordered, that a copy of this notice and order be served by said marshal or his deputies upon such owners of the land to be condemned herein as may be found by said marshal or his deputies within the District of Columbia before the 10th day of April, A. D. 1906. By the court: JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 18-1t

**Legal Notices.****SECOND INSERTION.****Gittings & Chamberlin, Attorneys****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Harriet Ann Butler, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Tuesday, the 10th day of April, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 20th day of March, 1906. WALLACE MCK. STOWELL, by Gittings & Chamberlin, Attorneys. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,689. Administration. [Seal.] 12-3t

**W. Russell Graham, Attorney****In the Supreme Court of the District of Columbia,  
Holding a Probate Court.****In re Estate of James Storey, Deceased.**

Administration. No. 13,362.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for the probate of a paper writing purporting to be the last will and testament of James Storey, deceased, and Eva M. Payne, one of the persons named in said application as an heir at law and next of kin of the decedent, having been returned "Not to be found," it is, this 20th day of March, 1906, ordered that said Eva M. Payne appear in said court on or before Thursday, the 26th day of April, 1906, at 10 o'clock A. M., and show cause why such application should not be granted. Provided a copy of this notice be published once in each week for three successive weeks before the return day above mentioned in The Washington Law Reporter and The Washington Times, the first publication to be not less than thirty days before said return day. By the Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Attest: James Tanner, Register of Wills. 12-3t

**John C. Gittings, Solicitor****In the Supreme Court of the District of Columbia,  
Eosie May Hazard, Complainant, v. Richard J. Hazard, Defendant. Equity No. 23,960.**

The object of this suit is to obtain a divorce a vinculo matrimonii. On motion of the complainant it is this 16th day of March, A. D. 1906, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order to be published in The Washington Law Reporter and The Washington Times once a week for three successive weeks. HARRY M. CLABAUGH, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 12-3t

**W. Calvin Chase and W. C. Martin, Attorneys****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of West Dent, otherwise known as Westley Dent, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of March, 1906. SAMUEL M. PIERRE, 2124 L St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,374. Administration. [Seal.] 12-3t

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W.

**Legal Notices.****Wm. H. Linkins, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Joseph D. Milans, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of March, 1906. JOSEPH H. MILANS, McGill bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,558. Administration. [Seal.] 12-3t

**W. A. McKenney, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of George Brown, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Friday, the 13th day of April, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 21st day of March, 1906. AMERICAN SECURITY AND TRUST COMPANY, by Jas. F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 10,379. Administration. [Seal.] 12-3t

**J. A. Maedel, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of George C. Walker, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of March, 1906. KATIE CLIPPER, 408 M St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,549. Administration. [Seal.] 12-3t

**P. R. Hilliard, Attorney****In the Supreme Court of the District of Columbia,  
Holding a Probate Court.**

In the Matter of the Estate of Margaret Carroll, Deceased. Administration. No. 13,546.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by William H. McGrann and Mary Ellen Halpin, it is ordered this 21st day of March, A. D. 1906, that notice be and hereby is given to William Crahan (a brother), Daniel Crahan, John Crahan, Mary Crahan, Annie Crahan, James Crahan, Martin Crahan, William Crahan (a nephew), Ella Crahan, Julia Bresnahan, Lydia L. Cordes, May F. Cordes, Margaret Manning, Patrick Walsh, Mrs. Michael Sweeney, Margaret Lynch, James Dacey, Johanna Labrier, Nellie Cochran, John Dacey, Cornelius Dacey, Mary Limbaugh, Katie Reigney, Bridget Skelly, Howard Harpole, Tessie Harpole, Claude Harpole, Ora Harpole, Aro Harpole, and to the unknown heirs at law and next of kin of said Margaret Carroll, deceased, and to all others concerned, to appear in said court on Wednesday, the 25th day of April, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day hereinafter mentioned, the first publication to be not less than thirty days before said return day. HARRY M. CLABAUGH, Chief Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 12-3t

**Legal Notices.****W. H. Landvoigt, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of Louis Schnebel, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of March, 1906. **LIZZIE SCHNEBEL**, 538 8th st. S. E. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,481. Administration. [Seal.] 12-3t

**Chas. W. Darr and Richard A. Curtin, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.  
Estate of Mary L. Porter, Deceased.  
No. 13,518. Administration.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by **Walter E. Ennis**, it is ordered this 19th day of March, A. D. 1906, that notice be and hereby is given to—**Porter**, husband of **Mary L. Porter**, and to all others concerned, to appear in said court on Monday, the 23d day of April, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in *The Washington Law Reporter* and *The Washington Times* once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **WENDELL P. STAFFORD**, Justice. Attest: **James Tanner**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 12-3t

**H. D. Moulton, Solicitor  
In the Supreme Court of the District of Columbia.  
Harriet C. Loudin, Plaintiff, vs. Clifford P. Loudin,  
Adele Loudin, Blanche Loudin, Gladys Loudin,  
Henry Wyatt, Clyde Wyatt, Alma Wyatt, Frederick  
Wyatt, and Leroy Wyatt, Defendants.  
In Equity. No. 25,997.**

On motion of the plaintiff, by Mr. Harry D. Moulton, her attorney, it is this 18th day of March, 1906, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; provided a copy of this order be published once a week for three successive weeks in *The Washington Law Reporter* and *The Washington Times*; otherwise the cause will be proceeded with as in case of default. The object of this suit is to secure to the plaintiff, **Harriet C. Loudin**, assignment of dower in, and partition of, according to the interests of the parties hereto, the following described real estate, situate and lying in the city and county of Washington, District of Columbia, to wit: All that tract and certain piece or parcel of land and premises known and distinguished as and being parts of original lots numbered thirteen and fourteen (13 and 14) in square numbered one hundred and ninety-eight (198), beginning for the same on "L" street, forty-four (44) feet west from the northeast corner of original lot numbered fourteen (14), and running thence west along "L" street eighteen (18) feet, thence south one hundred and forty-six (146) feet and eleven (11) inches to a public alley, thence east along the line of said alley eighteen (18) feet, and thence north one hundred and forty-six (146) feet and eleven (11) inches to the place of beginning. Also the following described real estate, situate in the city and county of Washington, District of Columbia, to wit: All that parcel of land and premises known as being lot numbered eighty-nine (89) in W. O. Denison and Benjamin F. Leighton, trustees, subdivision of part of the tracts known as "Mount Pleasant" and "Pleasant Plains," as per plat recorded in liber county number six (6), folio six (6) of the records of the surveyor's office of the District of Columbia, said lot containing 29,580 square feet. Said defendants, **Clifford P. Loudin** and **Adele Loudin**, are of age. The other defendants are minors. [Seal] By the court: **HARRY M. CLABAUGH**, Chief Justice. A true copy. Test: **John R. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. 12-3t

Justice blanks of every description for sale at this office.

**Legal Notices.****Brandenburg & Brandenburg, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **John E. C. Smedes**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of March, 1906. **E. B. SMEDES**, 51 Wall st., N. Y. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,521. Administration. [Seal.] 12-3t

**John Haum, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Edward W. Sumners**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of March, 1906. **WILLIAM E. JORDAN**, Anacostia, D. C. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,482. Administration. [Seal.] 12-3t

**W. A. McKenney, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of **Frederick M. Detweiler**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Friday, the 13th day of April, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 20th day of March, 1906. **AMERICAN SECURITY AND TRUST COMPANY**, by **Jas. F. Hood**, Secretary. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,737. Administration. [Seal.] 12-3t

**Charles J. Murphy, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Mary W. Ryan**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of March, 1906. **CHARLES J. MURPHY**, 412 5th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,446. Administration. [Seal.] 12-3t

**THIRD INSERTION.****Lambert & Baker, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Daniel A. O'Donnell**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of March, 1906. **CATHARINE S. O'DONNELL**, 1229 N. J. ave. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,322. Administration. [Seal.] 11-3t

**Legal Notices.**

**F. Edward Mitchell, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**Estate of Sarah P. Harbin, Deceased.**  
**No. 13,373. Administration.**

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by George F. Harbin, it is ordered, this 14th day of March, A. D. 1906, that notice be, and hereby is, given to James T. Harbin, Manila, Philippine Islands; John Jones, Charles County, Maryland; Elizabeth Jones, Nome, Alaska, and Richard Jones, who last resided at Texas, and to all others concerned, to appear in said court on Monday, the 16th day of April, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.  
 [Seal] **WENDELL P. STAFFORD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 11-3t

**E. S. Mussey, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of John Eaton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of March, 1906. **ALICE S. EATON, The Concord.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,589. Administration. [Seal.]** 11-3t

**E. H. Thomas, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John R. Wright, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of March, 1906. **EDWARD H. THOMAS, 918 F. St. N. W.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,588. Administration. [Seal.]** 11-3t

**E. H. Thomas, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**In re Estate of Reuben B. Detrick, Deceased.**  
**Adm. No. 12,549.**

The executor and trustee having reported that he has sold lots numbered twenty-eight (28) and twenty-nine (29) in square numbered eight hundred and thirty-two (322), in the city of Washington, District of Columbia, to Emanuel Speich for seven hundred (\$700) dollars, all cash, less three (3%) per cent brokerage commission, it is by the court, this 14th day of March, A. D. 1906, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 14th day of April, 1906. Provided a copy of this order be published in The Washington Law Reporter once a week for each of three successive weeks before said last named day. **WENDELL P. STAFFORD, Justice.** A true copy. Attest: James Tanner, Register of Wills. 11-3t

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**Legal Notices.**

**William M. Lewin, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the State of Pennsylvania, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Alexander Fishel, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of March, 1906. **BIRD A. JACOBS, 728 7th st. N. W., Wash., D. C.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,532. Administration. [Seal.]** 11-3t

**J. D. Sullivan, Solicitor**

**In the Supreme Court of the District of Columbia.**  
**Silas S. Dalsh v. Unknown Heirs, etc., of Martin Foley et al.**

**Equity, No. 25,500.**

The object of this suit is to establish the title of the complainant against the defendants by adverse possession in and to the south half of lot five (5) in Samuel Davidson's subdivision of lots in square 133, as per plat recorded in Liber N. K., folios 19 and 20, of the records of the office of the surveyor of the District of Columbia. It appearing to the court that the summons issued herein has been returned not to be found as to the defendants herein named, and it further appearing to the court that upon good cause shown by affidavits herein filed it is not necessary that this order should be published twice a month for a period of not less than three months, on motion of the complainant, it is, this 14th day of March, A. D. 1906, ordered that the defendants, Martin Foley, junior, George Hatch, Samuel Hatch, Sarah J. Burdick, and Amanda Bennett, and the unknown heirs, devisees, and alienees of such of them as are dead, and the unknown heirs, devisees, and alienees of Martin Foley, senior, Martin Foley, junior, and James H. Murphy, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of forty days, exclusive of Sundays and legal holidays, after the day of the first publication of this order; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for four successive weeks before said return day in The Washington Law Reporter and Washington Times, said order to be published twice a month in the month of March, 1906. **HARRY M. CLABAUGH, Chief Justice.** True copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 11-4t

**P. W. Frisby, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Frank Braxton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 14th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of March, 1906. **MARY E. BRAXTON, 2043 9th st. N. W.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,548. Administration. [Seal.]** 11-3t

**E. H. Thomas, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**In re Estate of Reuben B. Detrick, Deceased.**  
**Adm. No. 12,549.**

The executor and trustee having reported that he has sold premises Nos. 1678, 1680, 1682, and 1684 Kramer street northeast, in the city of Washington, District of Columbia, being sublots numbered 218, 219, 220, and 221 in block numbered 27, Rosedale, to Percy H. Russell, for the net sum of twenty-nine hundred (\$2,900) dollars cash, it is by the court, this 14th day of March, 1906, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 14th day of April, 1906. Provided a copy of this order be published in the Washington Law Reporter once a week for each of three successive weeks before said last named day. **WENDELL P. STAFFORD, Justice.** A true copy. Attest: James Tanner, Register of Wills. 11-3t

**Legal Notices.**

**Thompson & Laskey, Solicitors**  
In the Supreme Court of the District of Columbia,  
Holding an Equity Court.

**Mary J. Cooper, Complainant, v. Thomas E. Wagman et al., Defendants.** No. 25,979.

The object of this suit is to have substituted a trustee under the will of Mary McKenney, deceased, for the purpose of carrying out the provisions of said will. On motion of the complainant, it is, this 15th day of February, A. D. 1906, ordered that the defendant, Mary Kane, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three

[Seal] successive weeks in The Washington Times.  
WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 11-3t

**Chas. S. Shreve, Jr., Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Mary A. Johnson, otherwise known as Mary A. Bridges, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of March, 1906. THOMAS S. SERGEON, 1011 7th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,410. Administration. [Seal.] 11-3t

**Chas. H. Bauman, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Caroline Biehler, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 9th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of March, 1906. JOHN JACKENSHAUSEN, 1238 20th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,515. Administration. [Seal.] 11-3t

**G. P. McGlue, Attorney**  
In the Supreme Court of the District of Columbia.  
**Bartholomew Daly v. Leander Scott et al.**  
Equity No. 25,046.

The object of this suit is to establish the title of the complainant by adverse possession to the following described real estate, situate in the city of Washington, District of Columbia, to wit: lots numbered sixteen (16), seventeen (17), nineteen (19), and twenty-one (21), in William B. Todd's subdivision of part of square numbered ten hundred and thirty-three (1033), as per plat recorded in the office of the surveyor for said District, in liber W. F., folio 151. On motion of the complainant, by G. Percy McGlue, his solicitor, it is, this 9th day of March, 1906, ordered that the defendants, Leander Scott, William L. Scott, Julian F. Scott, Corrine L. Scott, William L. Scott, junior, Mary P. Scott, Leanna Cory, Louisa Scott, Martha C. Scott, a minor, Clara I. Scott, a minor, Libbie Smith, Samuel W. Young, Ruth Rickey, Ruth H. Morrow, Sarah E. Steen, Herod Osborn, Richard Osborn, Decatur Osborn, Mason Osborn, Grace Osborn, Alverda Osborn, Jane Campbell, and Elizabeth M. Young, cause their appearance to be entered herein, on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks prior to said return day in The Washington Law

[Seal] Reporter and The Washington Post. WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 11-3t

**Legal Notices.**

**Joseph E. Fague, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.  
**Estate of Jonathan Hamilton, Deceased.**  
Administration, No. 13,503.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Samuel M. Tyler, it is ordered this 9th day of March, A. D. 1906, that notice be and hereby is given to Charles E. Hamilton, and to all others concerned, to appear in said court on Thursday, the 19th day of April, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said

[Seal] return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 11-3t

**Henry C. Stewart, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, who were by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Eleanor J. Cooper, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Thursday, the 15th day of April, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 14th day of March, 1906. JAMES M. GREEN, WILLIAM E. TUTTLE, JR., ARTHUR D. TUTTLE, by Henry C. Stewart, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,490. Administration. [Seal.] 11-3t

**FOURTH INSERTION.**

**Leon Tobriner and Byron U. Graham, Solicitors**  
In the Supreme Court of the District of Columbia.  
**Isador Neuburger, Trustee, v. Charles W. Dant et al.**  
No. 25,888. Equity.

The object of this suit is to perfect complainant's title to part of lot lettered "G" in Benjamin Follard's subdivision of part of square numbered five hundred and seventy (570) as per plat recorded in liber N. K., folio 177, of the records of the office of the surveyor of the District of Columbia, described as follows: Beginning for the same on "D" street at the southwest corner of said lot, and running thence east on said street seventeen (17) feet six (6) inches; thence north one hundred and twenty (120) feet to a public alley fifteen (15) feet wide; thence west on said alley seventeen (17) feet six (6) inches to the northwest corner of said lot; and thence south one hundred and twenty (120) feet to the place of beginning. On motion of the complainant, by his solicitors, Leon Tobriner and Byron U. Graham, it is this seventh (7) day of March, A. D. 1906, ordered that the defendants, Annie Middleton, Edith LeFevre, Fannie Mullen, George Dant, Allan Dant, Victor Dant, Frances F. Hurley, George J. Hurley, and William B. Hurley, cause their appearance to be entered herein on or before the fortieth (40th) day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs, alienees, and devisees of Richard T. Queen, cause their appearance to be entered herein on or before the first rule day occurring three months after the publication of this order; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks prior to said first return day and twice a month for three successive months prior to said latter return day (the last publication to include one of the former publications) in The

[Seal] Washington Law Reporter and The Washington Times. By the court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. mar. 9-16-25-30; apr 20-27; may 18-25-1906

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WASHINGTON, D. C. - - - - - APRIL 6, 1906

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## DECISIONS BY THE COURT OF APPEALS THIS WEEK.

### Bribery; Sufficiency of Indictment.

In *Benson v. United States*, the appeal was one specially allowed from an order overruling a demurrer to an indictment charging the appellant with bribery, in that he had paid money to certain Government clerks to secure advance information in connection with reports of special agents. The Court of Appeals, in an opinion by Mr. Justice McComas, affirms the order appealed from, holding that the averments of the indictment are sufficiently specific to inform the defendant of the charges made against him.

### Physicians; Failure to Report Case of Diphtheria; Conviction Reversed.

In *Johnson v. District of Columbia*, the plaintiff in error was convicted in the Police Court upon an information charging that, while in attendance at the Woman's Dispensary, he had failed to report a case of diphtheria. It appeared that a child was brought to the dispensary for treatment, but when the defendant saw symptoms of diphtheria he declined to treat the child, and ordered the mother to take it home and summon a physician to attend it. The Court of Appeals reversed the conviction, holding that the section of the act requiring a report to be made was intended to apply only to practicing physicians who, being called upon, undertake the treatment of persons suf-

fering from diphtheria or scarlet fever, and not to those engaged in a special service who decline to treat such cases because not in the line of such service. The opinion is by Mr. Chief Justice Shepard.

### Equity; Suit to Cancel Deeds; Fraud; Fiduciary Relations.

In *Holtzman v. Linton*, the suit was brought to procure the cancellation of certain deeds and conveyances in trust, under which certain of the defendants claimed interests in and liens upon a lot in this city, and also of a certain compromise agreement confirming said interests and creating a lien upon the remaining interest of complainant in said lot to secure an alleged debt. An injunction was also sought to prevent a sale under said trust deeds. The trial court held that a fiduciary relation existed between complainant and the principal defendant, and that the several deeds had been obtained in violation of the duty imposed by that relation, and decreed in favor of complainant, a reference to the auditor being ordered for an accounting. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, affirms the decree, and remands the cause that the accounting may be had.

### Equity; Reformation of Deed.

In *Marshall v. Lane*, the appeal was from a decree for complainant in a suit to reform a deed. It appeared that the real estate was purchased by a husband and wife, and the title taken in their joint names; and that while it was their intention to hold as tenants in common, under the law then in force the deed in question created a tenancy by the entirety. On the death of the husband the wife claimed the entire property. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, affirms the decree below, by which the deed was reformed so as to create a tenancy in common.

### Equity; Specific Performance; Notice.

In *Johnson v. Tribby*, the suit was for specific performance. It appeared that the owners of real estate, after agreeing in writing to sell to the appellee, had sold the same to appellant. Appellant was an officer of a corporation engaged in the real estate business, and another officer of the corporation who acted as his agent in the transaction was also the agent of the owners and was cognizant of the agreement to sell to the appellee. The trial court decreed in favor of complainant, and directed a conveyance to him on payment of a certain sum, and the Court of Appeals affirms the decree in an opinion by Mr. Justice Duell.



**Seventy-Third Rule; Affidavit of Defense.**

In *Booth v. Arnold*, the appeal was from a judgment for plaintiff under Rule 73. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, reverses the judgment. It is held that an affidavit of defense is not directed to the plaintiff's affidavit, and need do no more than set forth a defense to the action set forth in the declaration within the scope of the pleas; and where in his affidavit the plaintiff sets up matter outside of his declaration and in anticipation of some defense thereto, the defendant is not bound in his affidavit to deny said collateral matter.

**Trade-Marks; Proper Names.**

The name "Spalding" is held not subject to appropriation as a trade-mark, in the case of *In re application of Spalding*, appealed from the Commissioner of Patents. The opinion is by Mr. Justice Duell.

**Equity; Foreclosure Sale of Syndicate Property; Purchase by Members; Right of Member Not Contributing.**

In *Starkweather v. Jenner*, the question was as to the right of a member of a syndicate who, on a foreclosure sale of the syndicate property, had not contributed to the price paid by others in the syndicate who had bought in the property, to participate in the benefits of the purchase. The Court of Appeals, in an opinion by Mr. Justice McComas, which affirms the decree below, holds that the failure of the complainant to contribute to the purchase price, as well as his delay in seeking relief, precluded him from maintaining his suit.

**Embezzlement; Sufficiency of Indictment.**

In *O'Brien v. United States*, the appellant was convicted of embezzlement. By a motion in arrest of judgment he contested the sufficiency of the indictment, but his motion was overruled by the trial court. The Court of Appeals affirms the judgment, in an opinion by Mr. Justice McComas.

**The Juvenile Court.**

The question of what shall be done with youthful violators of the law, at least in some of its phases, has been happily solved for this District in the creation by Congress of the new Juvenile Court. The wisdom of the proposed legislation was recognized by all, and the community at large is to be congratulated upon its enactment. The action of the President in appointing Mr. William H. DeLacy as the first judge of the court has also been generally commended. Mr. DeLacy is a lawyer by profession, and a man of broad sympathies, having been actively identified with various charitable organizations in this District. The importance of the duties of his new position can not be overestimated, and those best acquainted with him confidently predict that he will fully measure up to their obligation.

**Court of Appeals of the District of Columbia.****MERCANTILE TRUST COMPANY,  
APPELLANT,**

v.

**MELVILLE D. HENSEY, APPELLEE.**

**BUILDING CONTRACT; ARCHITECT'S CERTIFICATE; DEFECTIVE WORK; MEASURE OF DAMAGES; DELAY IN COMPLETION; LIQUIDATED DAMAGES; BONDS; LIABILITY OF SURETY; PLEADING; SET-OFF; ARREST OF JUDGMENT.**

1. In the absence of express provisions to that effect in the contract, the certificate of an architect is not final and conclusive to the extent of precluding the owner from showing that the materials were inferior, or the work poorly done, or that there were other violations of the contract.
2. In an action on a bond given to secure performance of a building contract to recover damages for defective work the measure of damages is the difference between what the houses were worth as in fact completed and what they would have been worth if completed as required by the contract; and in such case the obligee in the bond is not precluded from recovering such damages from the surety by the fact that the surety, as the holder of notes secured by deed of trust, caused the same to be foreclosed and the houses sold immediately after their completion, no opportunity being given the owner to sell, rent, or otherwise utilize them.
3. Where the obligation of the surety on such a bond is that it will protect the owner from all loss arising from the non-fulfilment by its principal of the covenants contained in the building contract, and the contract provides that, on failure to complete the buildings within the time agreed upon, the contractor shall pay to the owner a certain sum for each day thereafter the work shall remain unfinished as liquidated damages, the surety will be liable, to the same extent as the principal, for such damages.
4. Under such a provision the principal and surety are bound to pay the amount fixed as liquidated damages without any proof of actual loss.
5. To an action on a bond securing the performance of a building contract the surety pleaded in bar the failure of the plaintiff to furnish mantels as provided in the contract, and also pleaded in bar his failure to pay the total sum agreed for completing the houses. Demurrers to the pleas were sustained, but at the trial the jury were instructed to deduct the value of the mantels and the balance of the contract price from any amount they might find due the plaintiff. *Held* that such provisions of the contract were covenants and not conditions, and the demurrers to the pleas were properly sustained.
6. Where a declaration contains several inconsistent counts the court may direct that a separate verdict be returned as to each; but in the absence of such direction the fact that the jury has returned a verdict upon the entire declaration is no ground for arresting the judgment.

No. 1629. Decided March 7, 1906.

**APPEAL** by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 44,822, entered upon a verdict for plaintiff in an action on a bond. **Affirmed.**

*Mr. John Ridout and Mr. Hayden Johnson* for the appellant.

*Mr. A. A. Birney and Mr. H. F. Woodard* for the appellee.

Mr. Justice DUELL delivered the opinion of the Court:

One William S. Jones, a builder, on January 24, 1900, entered into a contract with appellee Hensey to complete twenty-one partially constructed houses for the stated consideration of \$89,250. To insure the performance of the contract, Jones gave to Hensey a bond in the penal sum of \$50,000, with appellant, the Mercantile Trust Company, as surety. It further appears that five of these houses were owned by the

Tulloch estate, and that Hensey was bound to complete them. He gave to Samuel W. Tulloch a bond to insure the completion of these houses. This appellant was also the surety on that bond.

On July 23, 1901, Hensey sued the Mercantile Trust Company to recover \$50,000, the amount of the \$50,000 bond. The declaration contained one count, alleging that by its certain written obligation, duly sealed, the defendant acknowledged that it was bound unto the plaintiff in the sum of \$50,000, no part of which had been paid. To this declaration a plea of non est factum was filed. Thereupon a second count was added, which recited the bond as that of William S. Jones, principal, and the Mercantile Trust Company, surety, with other necessary averments. To this count defendant pleaded performance, set-offs, payment, and discharge, and the failure of plaintiff to perform his part of the contract. A demurrer was filed and sustained to the pleas alleging plaintiff's failure to perform; issue was joined on the pleas of payment and discharge; replication non assumpsit was filed to the pleas of set-offs and issue joined, and replication to the plea of performance, denying the same and assigning breach, upon which issue was joined. Later, leave being granted, a rejoinder was filed to plaintiff's replication assigning breach, and to this rejoinder plaintiff demurred and his demurrer was sustained. Trial being had upon the issues of performance, set-offs, and payment and discharge, the case went to the jury, which found a verdict for plaintiff in the sum of \$8,468, for which amount judgment was given May 19, 1905, after a motion to arrest the judgment on the verdict had been denied. From that judgment this appeal was taken.

The appellant assigns as reversible error the following:

"1. In sustaining the demurrer to the defendant's further rejoinder.

"2. In admitting evidence tending to prove that the buildings were not completed in accordance with the plans and specifications.

"3. In admitting the testimony of the witness Hough that the work had not been done in accordance with the plans and specifications and the cost of remedying the alleged defects.

"4. In admitting the testimony of the plaintiff that the work and material used in the houses was in many respects, in his estimation, below the requirements of the plans and specifications.

"5. In granting the plaintiff's second prayer, which reads as follows:

"If the jury find from the evidence that the buildings in question were not constructed in accordance with the contract, plans, and specifications therefor, then they are instructed that the plaintiff is entitled to recover such damages as he may have proved resulted therefrom, and the measure of his recovery on this ground is the difference between what the houses were worth when completed and what they would have been worth had they been completed as required by the contract."

"6. In refusing to grant defendant's first prayer, which reads as follows:

"The jury is instructed that upon all the evidence in this action that the plaintiff is not entitled to recover any damages against the defendant by reason of any structural defects

claimed to exist in the erection of the houses referred to in this action, and in respect of this claim their verdict should be for the defendant."

"7. In refusing to grant the defendant's second prayer, which reads as follows:

"The jury are instructed that the certificate of William J. Palmer accepting the houses made the subject of this litigation is conclusive of their completion according to the terms of the contract, and they are therefore not to consider any structural defects claimed to exist therein, and in this respect their verdict should be in favor of defendant."

"8. In refusing to grant defendant's twelfth prayer, which reads as follows:

"The jury are instructed that in considering the question of structural defects they are not at liberty to consider anything but omissions, if any they find, and are not entitled to consider substitutions of materials or modifications of construction made with the approval of the architect under his interpretation of the plans and specifications."

"9. In admitting evidence tending to prove delay in completing the houses referred to in the Jones contract.

"10. In granting the plaintiff's first prayer, which reads as follows:

"If the jury find from the evidence that the houses in question in this cause were not completed until after August 24, 1900, then they are instructed that for every day after such time that the work remained unfinished, the plaintiff is entitled to recover \$50, and they should so find."

"11. In refusing to grant defendant's third prayer, which reads as follows:

"The jury are instructed upon all the evidence in this action that the plaintiff is not entitled to recover against the defendant for any damages claimed to have been incurred by reason of delay in construction of the houses referred to in this suit, and in respect of this claim the verdict should be in favor of the defendant."

"12. In admitting evidence tending to prove that the difference in value of the said houses by reason of defective construction was from \$2,000 to \$3,000 per house.

"13. In refusing to grant defendant's eleventh prayer, which reads as follows:

"The jury are instructed that there is no evidence in this case legally sufficient to justify them, in any event, in finding a verdict in favor of the plaintiff, on account of alleged structural defects, for more than nominal damages."

"14. In sustaining the demurrer to the additional pleas numbered 3 and 4, which alleges plaintiff's failure to perform his part of the contract.

"15. In overruling defendant's motion in arrest of judgment."

Appellant's contentions on which he relies embody the assignments of error grouped together. These will be considered in the order in which they are set forth.

1. That as there was no evidence of fraud or bad faith on the part of the architect, his certificate of completion, given as provided by the building agreement, is final and conclusive. There can be no question but that it is competent for the parties to a contract to agree that

the certificate of an architect or other person shall be final and conclusive, and that in the absence of fraud or bad faith, which latter may arise and be shown in various ways, his certificate is final and conclusive. *Crane Elevator Co. v. Olark*, 80 F. R., 705; *Sweeney v. U. S.*, 109 U. S., 618; *Chicago, etc., R. R. Co. v. Price*, 138 U. S., 188.

It is equally true, however, that such an agreement should be set out in clear and express language, and can not be implied. *Central Trust Co. v. Louisville, etc., Ry. Co.*, 70 F. R., 282, and cases there reviewed. The reasons for this are obvious. Where differences arise between parties, it is their right to settle such differences between themselves, or to appeal to the courts, and these rights should not be taken from them and lodged in a third party without an express agreement. The law applicable to the general subject is well settled, and the only difficulty lies in applying the law to the facts. It becomes necessary in every case to examine the agreement. The provisions of the contract in the case at bar require that the houses shall be completed "agreeably to the drawings and specifications made by Melville D. Hensey, architect, and which plans and specifications are signed by the said parties hereto, and hereunto annexed, within the time aforesaid, in a good, workmanlike, and substantial manner, to the satisfaction, and under the direction of Bates Warren, or the architect placed in charge by him, to be testified by writing or certificate under the hand of Bates Warren, or the architect placed in charge by him, and also shall and will find and provide such good, proper, and sufficient material, of all kind whatsoever, as shall be proper and sufficient." And there is a further agreement that "the specifications and drawings are intended to cooperate, so that any work exhibited in the drawings and not mentioned in the specifications, or vice versa, is to be executed the same as if it were mentioned in the specifications and set forth in the drawings, to the true meaning and intention of the said drawings and specifications, without any extra charge whatever." Payments as the work progressed were agreed to be made, provided that "a certificate shall be obtained from and signed by the architect in charge, that the contractor is entitled to payment; said certificate, however, in no way lessening the total and final responsibility of the contractor. Neither shall it exempt the contractor from liability to replace work, if it be afterwards discovered to have been done ill, or not according to the drawings and specifications, either in execution or materials; and, further, that the party of the second part shall furnish, if required, satisfactory evidence that no lien does or can exist upon the work." The specifications, made a part of the contract, provide, among other things, "for material to be furnished and labor to be performed in the erection and completion of twenty-one (21) residences . . . for Mr. Melville D. Hensey, to be built according to the plans and elevations, and detail drawings, and these specifications, prepared by M. D. Hensey, architect, but under the supervision of an architect to be appointed by Bates Warren, said architect appointed to take entire charge."

In the general conditions these recitals appear: "The contractor will provide all the materials, new and of the best quality, and will execute and complete all the work as set forth in the specifications and drawings in the best and most workmanlike manner. . . . In all cases of doubt as to the meaning of the drawings reference is to be made to the architect in charge, whose decision will be final. The drawings and specifications are intended to cooperate, and anything shown upon one or stated in the other is to be done and performed as if set forth in both."

Bates Warren, named in the contract, on April 19, 1901, appointed one Palmer, an architect, to take entire charge. He accepted the appointment and on July 29, 1901, he gave Mr. Warren the following certificate:

"July 29, 1901.

BATES WARREN, Esq., Washington, D. C.

DEAR SIR: It gives me pleasure to report to you the completion of the twenty-one Kellogg houses, located on Vernon, California, Kalamazoo, and Belmont avenues, by the Mercantile Trust Company, of Pittsburg. The work has been done according to my interpretation of the plans and specifications, and where deviations have been made from the plans and specifications, it has been where the same has been inconsistent and ambiguous; and in all cases of inconsistency and ambiguity the work has been done according to the interpretation most beneficial to the houses.

Yours very truly,

W. J. PALMER."

It appears by the record that Palmer was called as a witness for plaintiff and on cross-examination testified in substance that "a large part of the work upon the houses in question was completed when he commenced his supervision; that he did not regard it as his duty to change conditions there excepting where the brickwork had been destroyed by vandalism, and tore nothing down unless it was in danger of falling down. Had nothing to do with the work which was already done, and was only to supervise the completion of the work. The witness testified further that on June 17, 1901, he wrote to Mr. S. W. Tulloch a letter which was produced in evidence, which letter reviewed a large number of alleged defects in the work on the houses, recognized some as existing and stated they would be remedied, and declared that other objections were not well taken, and contained a further statement as follows: 'You will appreciate, I have no doubt, the difficulty of my position; having but recently been appointed (April 19, 1901) as architect in charge, my position really becomes rather referential than administrative and supervisory,' and said witness explained that by the said statement he thought he meant that most of the work had been done, and it was difficult for him to rectify work that was already done badly."

After an examination of so much of the contract and specifications as are set out in the record, we are forced to the conclusion that its terms are not sufficiently clear and express to warrant us in holding that the architect's letter, reporting the completion of the houses, must be taken as final and conclusive and sufficient to preclude the appellee from giv-

ing testimony showing that the contract had not been complied with. True, the contract says that the work is to be done "to the satisfaction and under the direction of Bates Warren or the architect placed in charge by him." It does not say that his decision that the work has been done to his satisfaction is to be final and conclusive. Nowhere do we find any stipulation that the architect's decision on any point is to be final, save "as to the meaning of the drawings." Further, when payments were called for they were only to be made upon the certificate of the architect, but such certificate was in no way to lessen the final responsibility of the contractor, and obliged him to remedy defects either in execution of the work or in materials. This, we think, tends to show that it was not the intention of the parties, especially Hensey's, to make the architect's certificate final and conclusive. We do not think that under the authorities fraud or bad faith on the part of Palmer must be shown in order to go behind his letter reporting the completion of the houses. Even his letter says that deviations from the plans and specifications have been made, and he adds that where that has occurred the work has been done to the advantage of the houses. Called as a witness, as we have shown, on cross-examination, he testified that in a letter to S. W. Tulloch he had written that his position had been referential rather than administrative and supervisory. The facts, as we view them, bring the case within the line of authorities, holding that the certificate of an architect, in the absence of express language, is not final and conclusive to the extent of precluding the owner from showing that the materials were inferior or the work poorly done, or to show other violations of the contract. *Glacius v. Black*, 50 N. Y., 145; *Fontano v. Robbins*, 22 App. D. C., 253, and cases there cited. We think the facts of this case do not bring it within appellant's contention that the architect's certificate of completion is final, and, therefore, all the errors assigned relating to the subject are not well founded, and no error was committed by the trial court in his rulings on this question.

2. It is next urged that even if the houses were not completed in the manner required, there is no proof in the case that damages were sustained by appellee by reason thereof. To sustain this proposition it is argued that as the houses were sold under foreclosure immediately after completion, appellee, besides showing diminished value owing to the way houses were constructed, should have proved that he thereby sustained some tangible loss. We think the court was right in stating the measure of damages in the case to be "the difference between what the houses were worth when completed, and what they would have been worth had they been completed as required by the contract." The question was left to the jury to determine whether the houses were constructed in accordance with the contract plans and specifications. There was evidence on the subject sufficient to make the question one for the jury. If the appellant sold the houses immediately after their completion, as the record shows, the appellee thereby was given no opportunity to rent or sell the houses, or otherwise utilize them.

It would be a harsh rule, and one so far as we know never applied, that a contractor can improperly erect a building by departing from the contract plans, possess himself of a mortgage or trust notes on the property, sell the building at auction, bid it in, and thereby be in a position to say to the owner: Yes, I failed to comply with the terms of the contract so that the building when completed was not worth as much as it would have been had I properly carried out the contract, but though you were damaged, you can not recover anything, for I have foreclosed a lien upon it and your title is extinguished. No one can profit in this way by his own wrong. The proposition is untenable, and the cases cited by appellant do not support it.

3. Appellant further contends that the surety assumed no liability for damages for delay, but that, should it be held otherwise, he is not bound by any stipulation as to liquidated damages, and, there being no proof of any actual damages, no liability is imposed upon him. With his assertion that a surety's liability can not be extended by implication we agree. The appellant's liability for damages owing to a delay in completing the work, and that such damages are liquidated damages, must be found, if at all, in his written obligation, taken in connection with the contract. The obligation of the appellant under his bond to respond for the delay in completing the houses is claimed to be found in the following clause of the bond: "That if the said principal shall duly and faithfully perform and fulfill all and every the conditions of said contract, above recited, on his part to be kept and performed, and shall keep harmless and protect the said obligee from and against all loss by reason of the non-fulfillment by the said principal of the covenants contained in said contract, to be performed by him as aforesaid, and also against actual loss by reason of any and all claims, defects, errors, objections, liens, and encumbrances, arising from the non-fulfillment by the said principal of the said covenants, then this obligation to be void; otherwise to be and remain in full force and effect." In short, the appellant agrees to protect the appellee from all loss arising from the non-fulfillment by its principal of the covenants in the contract contained. Turning to the contract we find that it provides that "Should the contractor fail to finish the work at, or before, the time agreed upon, he shall pay to the party of the first part the sum of \$50 for each and every day thereafter the said work shall remain unfinished as and for liquidated damages," etc. If the principal be holden to make the payment for delay, and the damages are liquidated, we see no reason why the surety is not also liable. It is bound to do all that its principal was holden to do. That the principal was bound to pay the amount fixed as liquidated damages without any proof of actual loss is settled by the decision in the case of *Sun Printing Co. v. Moore*, 183 U. S., 642.

4. It is also contended that the performance of the agreements of the appellee were conditions precedent to that liability of the appellant, and that the appellee failed to perform in two respects. The bond is issued upon the express condition "that all the covenants and agree-

ments contained in said contract made by the said obligee and on his part to be kept and performed, for the protection of the obligee, and the said security shall be strictly kept and performed by the said obligee." It is insisted that the failure of the appellee to furnish 82 mantels and to pay the whole contract price were conditions and not covenants. The clause of the contract relative to the mantels is that they were to be furnished to the party of the second part (Jones) by the party of the first part (Hensey) free of charges. The mantels were not furnished. Appellant pleaded *in bar* the failure of appellee to furnish them. Demurrer was filed to this plea and sustained. At the trial the value of the mantels was proved to be \$1,325, and the jury, at appellant's request, was instructed to deduct such sum from any sum found by them to be due in respect of damages, if any such they found, for delay in or defects in the construction of the houses. We can find nothing in the contract to warrant a conclusion that the agreement to furnish the mantels was a condition. It was a mere covenant, and appellant received the amount claimed as the value of the mantels. We think the court below properly sustained the demurrer to the plea *in bar*. Appellant also pleaded *in bar* appellee's failure to pay the total sum agreed by him to be paid for completing the houses. Appellee demurred to this plea and it was sustained. There was no error in this, for the agreement to pay was also a covenant and not a condition. The amount due was \$3,630, and at the request of appellant's counsel the court instructed the jury to credit that amount upon any damages, if any such they found, for delay or defects in the construction of the houses. It may be here said that other set-offs were allowed appellant, in the light of which the amount of the damages found for appellee may seem somewhat large. The case, however, was properly left to the jury, and there is no authority vested in us to disturb their verdict, even though that question of the verdict being excessive was before us.

One other question remains for consideration. It is that the motion in arrest of judgment should have been granted because there were two inconsistent counts and no evidence was offered in support of the first count. We have heretofore stated the nature of the counts, and it is unnecessary to set them out. The questions raised by the motion have been settled by this court. The first in *Ohanders & Taylor Co. v. Norwood*, 14 D. C. App., 357-366: 27 Wash. Law Rep., 166; the second by *Hartman v. Ruby*, 16 App. D. C., 45, 60: 27 Wash. Law Rep., 155. In the latter case we said:

"There is neither law nor practice in this District which requires that when two or more counts are combined in one declaration the verdict of the jury must be separate upon each count. A separate verdict upon each count may be directed by the court in such cases, if the circumstances require or justify it; but, unless the jury are so directed it is not ground for arresting the judgment that the jury has conformed to the uniform practice, and has rendered one entire verdict upon the declaration as a whole."

We think no reversible error has been shown,

and, therefore, the judgment appealed from should be affirmed, with costs. And it is so ordered. Affirmed.

WILLIAM BURGE, APPELLANT,

v.

UNITED STATES.

HOMICIDE; SUFFICIENCY OF INDICTMENT; EVIDENCE; PROOF OF COMMISSION BY DEFENDANT OF ANOTHER CRIME.

1. An indictment for murder framed in accordance with the common law form held sufficient to support a conviction of murder in the first degree under section 798 of the Code.
2. On the trial of a defendant charged with the murder of his wife, held error to admit evidence to the effect that, a half hour after the killing of his wife, he went to the home of her mother, some distance away, and made a murderous assault upon the latter, there being no sufficient proof nor such obvious relation between the two crimes that it could clearly be inferred that the one in any way characterized the other.

No. 1619. Decided January 4, 1906.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, Criminal No. 24,627, entered upon a verdict finding him guilty of murder in the first degree. Reversed.

Mr. Hugh T. Taggart and Mr. Thos. L. Jones for the appellant.

Mr. D. W. Baker, Mr. C. H. Turner, and Mr. J. C. Adkins for the United States.

Mr. Justice McCOMAS delivered the opinion of the Court:

William Burge, the appellant, was indicted for the murder of Daisy Burge, and was tried and convicted of murder in the first degree. There was no demurrer to the indictment. A motion for a new trial was overruled. There was no motion in arrest of judgment. The appellant was sentenced to be hanged. The case comes before this court upon an appeal from the judgment and sentence, and upon bills of exception.

The objection here taken to the indictment was not made at the trial below, nor called to the attention of the trial court in any manner. Under the rule of this court, were this not a capital case, the first question would not be considered here, but because of the gravity of the case this court, in this instance, disregards these serious omissions.

There are three assignments of error, really involving two questions:

First. That the court below erred in permitting the verdict of murder in the first degree to stand, because the indictment is not a valid indictment for murder in the first degree.

Second. The court erred in permitting the prosecuting attorney, over appellant's objection, to state in his opening proposed proof of facts tending to show the commission by appellant of another and different crime, not charged in the indictment, and the court erred in permitting evidence of such facts to be given to the jury over appellant's objection.

1. The sufficiency of the indictment in this case to sustain a verdict of murder in the first degree was substantially decided by this court in the case of *Hamilton v. United States* last week.

In that case it was contended that the indict-

ment failed to legally charge the crime of murder in the first degree, of which Hamilton was convicted, because the indictment failed to charge that the killing was done with intent to kill, but this court held that such indictment was not invalid by reason of the omission of an express allegation of an intent to kill.

In *Hamilton v. United States* we concurred with Mr. Wharton's conclusion (1 Wharton Criminal Law, sec. 393, 10 ed.):

"Under the statutes a common law indictment for murder is sufficient to sustain a verdict of guilty of murder, either in the first or the second degree. It being held, as has already been seen fully, that the line separating murder from manslaughter is in no way changed by our statutes, and it being further seen that murder in the second degree is simply murder at common law, with certain aggravating features discharged, it follows that on a common law indictment for murder a verdict of murder either in the first or in the second degree can be sustained."

And so Mr. Wharton says that it is not more reasonable to require a "specific intention to take life" to be specially averred than it is to require "sanity" to be specially averred.

We need not repeat the reasons so recently expressed for holding the indictment in that case sufficient. That indictment, however, charged that the deceased was choked, suffocated, and strangled.

The indictment we are now considering is substantially like the indictment for murder in the case of *Hill v. United States*, 22 App. D. C., 395: 31 Wash. Law Rep., 552. In the last mentioned case (p. 402) this court said:

"The definition of murder as given in section 798 of the Code is the common law definition of that crime, as we find it in the 4th book of Blackstone's Commentaries, page 195, transcribed from the 3d Institute of Ooke, page 47. It is not, therefore, a new or statutory definition of murder, but simply the common law definition of that crime. The indictment here is in the regular and long approved common law form, and the court below was clearly right in refusing to quash it for the reason assigned in the motion. Indeed, it was not necessary, in any view of the case, to charge that the accused was of sound mind and discretion, as essential to the validity of the indictment. 2 Bishop Crim. Proc., sec. 669."

And, as Mr. Wharton says, it was not essential to charge a "specific intention to take life."

The indictment upon which the appellant was charged and convicted, and which we are now considering, is in the common law form. It is as follows:

"That one William Burge, late of the District aforesaid, on the twenty-seventh day of January, in the year of our Lord, one thousand, nine hundred and five, and at the District aforesaid, with force and arms in and upon the body of one Daisy Jordan, otherwise called Daisy Burge, in the peace of God and of the said United States, then and there being, feloniously, purposely, and of his deliberate and premeditated malice did make an assault; and that the said William Burge a certain revolving pistol, of the value of two dollars, then and

there charged with gunpowder and divers, to wit, two leaden bullets, which said revolving pistol, he, the said William Burge in his right hand then and there had and held, then and there feloniously, purposely, and of his deliberate and premeditated malice did discharge and shoot off at, against, and upon the body of her, the said Daisy Jordan, otherwise called Daisy Burge; and that the said William Burge, with the divers, to wit, two leaden bullets aforesaid, out of the revolving pistol aforesaid, then and there by force of the gunpowder aforesaid, by the said William Burge discharged and shot off as aforesaid, then and there feloniously, purposely, and of his deliberate and premeditated malice, did strike, penetrate, and wound the said Daisy Jordan, otherwise called Daisy Burge, between the chin and right ear just below the jawbone of the right side of the head of her, the said Daisy Jordan, otherwise called Daisy Burge, and in and behind the lower tip of the right ear of the right side of the head of her, the said Daisy Jordan, otherwise called Daisy Burge, thereby then and there giving to her, the said Daisy Jordan, otherwise called Daisy Burge, with the leaden bullets aforesaid, in the manner and by the means aforesaid, two mortal wounds; one whereof was between the chin and right ear just below the jawbone of the right side of the head of her, the said Daisy Jordan, otherwise called Daisy Burge, and the other whereof was in and behind the lower tip of the right ear of the right side of the head of her, the said Daisy Jordan, otherwise called Daisy Burge, of which said two mortal wounds the said Daisy Jordan, otherwise called Daisy Burge, then and there instantly died."

The usual conclusion follows and is not necessary to be here recited.

The indictment of *Hill*, which was held good by this court, only differs from the indictment we are now considering in the part charging the wounding and wounds, and only differs in that part in one particular; that is to say, in the indictment of *Hill* it is averred "that H. . . . feloniously, purposely, and of his deliberate and premeditated malice did strike, penetrate, and wound the said C. T. H. . . . giving to her, the said C. T. H. then and there feloniously, purposely, and of his deliberate and premeditated malice with the leaden bullet . . . one mortal wound . . . of which said mortal wound she the said C. T. H. . . . did die."

In the indictment we are now considering, in the like part of the indictment, it is averred, "which pistol B. then and there feloniously, purposely, and of his deliberate and premeditated malice did discharge and shoot off against and upon the body of her, the said D. B.; and that the said B., with the . . . two leaden bullets . . . then and there feloniously, purposely, and of his deliberate and premeditated malice did strike, penetrate, and wound the said D. B. . . . thereby then and there giving to her, the said D. B., with the leaden bullets aforesaid in the manner and by the means aforesaid two mortal wounds . . . of which said two mortal wounds the said D. B. then and there instantly died."

Each of these indictments is in the common

law form. Considering them together, we conclude that the difference is immaterial. We must hold the present indictment to be good in the particular just quoted, because it expressly charges that B. then and there feloniously, purposely, and of his deliberate and premeditated malice made the assault charged, and that B. with two leaden bullets feloniously, purposely, and of his deliberate and premeditated malice did wound the said D. B., thereby giving her with the leaden bullets aforesaid two mortal wounds, of which she instantly died.

In the leading case of *White v. Commonwealth*, 6 Binney, 179, which Justice Harlan quotes and approves in *Davis v. Utah*, 151 U. S., 267, 268, and upon which we relied in *Hamilton v. United States*, the indictment is fully set out, and it is in all essential respects the same indictment we are here considering, and Chief Justice Tilghman held it a good indictment for murder and a good indictment under the statute to support a conviction of murder in the first degree.

In *Davis v. Utah* (supra), 263, the indictment is in every essential the same as this indictment, and of that (pp. 269, 270) Justice Harlan said: "We are of opinion that the indictment in this case sufficiently charges the crime of murder."

As we have at some length in *Hamilton v. United States* given the reasons for our opinion, and as it happens that the Supreme Court of Pennsylvania and the Supreme Court of the United States have approved precisely such an indictment, in every essential averment, as that the appellant here assails, we are of the opinion that this indictment sufficiently charges murder in the first degree, of which the appellant was convicted.

2. The second and third assignments of error present an important question. It is assigned as error that the court permitted the prosecuting attorney over appellant's objection to state in his opening proposed proof of facts tending to show the commission by appellant of another and a different crime not charged in the indictment, and in permitting evidence of such facts to be given to the jury.

The United States Attorney, in opening, stated that he expected to show another act of violence and that all was part of one continuous performance. To this appellant's counsel objected, and the court overruled the objection to this statement, because if the proof established that the latter crime was a part of a preconcerted plan or design it would be relevant upon the question of premeditation and deliberation.

Evidence tending to show that appellant with a revolver shot and killed his wife at 2006 R street, about midnight, was admitted, and later evidence tending to show that about a half hour afterwards the appellant went to 1102 O street, the home of Mary Jordan, his wife's mother, and with a revolver shot her with intent to kill.

The trial proceeded, and the evidence thus objected to was admitted. The court, in charging the jury, said among other things:

"There has been evidence offered tending to show that the defendant, after the occurrences which resulted in the death of Daisy Burge, shot Mrs. Lawson at her establishment. The fact that a man commits one crime is no evidence that he committed some other crime. But

when a man plans beforehand to commit two crimes, then it is relevant to show all that he did in the execution of his prior plan. Therefore, you should consider from all this evidence whether or not you believe that he went on to Mrs. Lawson's house and shot her as a part of a plan which he had formed before his wife was injured. If you do find that, you may take into consideration what transpired with respect to Mrs. Lawson, as bearing in a probative way upon the point of premeditation and deliberation. But unless you do find from the evidence that what transpired at the Lawson house was part of a plan which he conceived before his wife was injured, then you ought not to take that into consideration, because then it would leave the two incidents as separate and dissociated from each other; and no man can be convicted of one crime, as I have said, simply because he is guilty of another crime."

In order to a proper consideration of this question a statement of the leading facts is necessary.

It appears that on January 27, 1905, Daisy Burge received two pistol-shot wounds and her death was due to hemorrhage resulting from these wounds. In June, 1902, William Burge and Daisy Jordan were married and lived several years at the home of her mother, Mary Jordan, who says Burge treated his wife cruelly. Six months after the marriage he beat her. A year before her death he beat her very badly, kicked her, and threatened to kill her.

On Saturday before the homicide the pair went to live at the house of Eliza Harris. On Monday deceased left, taking her clothes and leaving a letter for Burge. After reading it, Burge told Eliza Harris that "his wife had done him dirty," and complained that she had carried away his clothes. Deceased visited her own home, but did not remain, fearing Burge, who searched for her. She went to Lena Lawson, her friend, who, with her mother, Annie Lawson, lived at 2006 R street. Deceased told Lena she feared her husband, and therefore asked Lena to secure her employment away from the city. On the day of the homicide, Lena took her to the house of Sarah Williams, 1835 R street, to talk concerning this employment out of town. While Lena and the deceased were there Burge came and insisted that his wife should come out and talk with him. When she refused to go out he went into the house, and the two talked so long privately and apart that Sarah Williams told them she must close her house. As they started to go deceased was crying and said "I am afraid to go out," and went so slowly that Burge "kind of pushed her out the door." Now, earlier on the same day, Burge had gotten leave of absence from his employer, saying he wanted to go to the station to meet out-of-town relatives. The same morning he went to a pawn-shop and purchased a revolver. As the party left the house, 1835 R street, Burge seized the deceased roughly; the two women walked toward 2006 R street, the deceased while trying to keep Lena between herself and her husband, and Burge seeking to walk next to her. As they drew near Connecticut avenue and R street, Burge said to deceased, "Your sister and your mother is the whole 'legation' of your leaving me." This



she denied. When the three reached the gate at the rear of the house where Lena lived, Burge said, "I want to see you, Daisy; I want you to go along with me." "No," said she, "I'll see you some other time." Immediately Burge seized her and shot her as Lena pushed the gate open. Lena grabbed him and deceased seized hold of Lena, and as the three struggled, they reached the kitchen door. Burge fired a second time, but Lena had caught his arms in time to throw them up. Just as Annie Lawson opened the door, all three stumbled in together. Deceased ran behind Annie Lawson, and Burge caught the arm of deceased and fired over Annie's shoulder the third shot, which wounded deceased in the neck. She fell to the floor. Burge turned upon Lena, saying, "You blackson of a bitch, I am going to kill you too," but the mother and daughter caught hold of him while the brother, Frank Lawson, opened the door and Burge was pushed out of the kitchen. In a few minutes the wounded woman was dead. The killing occurred at 12 o'clock.

Burge went to his room, 1425 Church street, and in a few minutes went out and went to the house of Mary Jordan, his wife's mother, 1102 O street. He arrived some time after 12 o'clock and insisted upon seeing his wife's mother, who had gone to bed. He went to her bedroom door, saying, "Mrs. Jordan, I have seen Daisy, and she said my trunk is here, and I want it." She replied, denying that the trunk was in the house. He answered, "Yes, it is, too." She said, "You are coming here to look for trouble," and he replied, "Yes, and I am going to get it." Frank Jordan, a boy of 14, seized him, but he fired and shot Mary Jordan in the mouth, and said to Frank, "Leave me go or I'll shoot you." When outside the door he shot a second time, and the bullet went through the panel door. Charles Venney, who lived in the house, came to the rescue, and the two took the revolver from Burge. During the struggle the pistol was again discharged, and Burge was wounded in the head. Officer Murphy then rushed in and arrested Burge, who later told him at the station house that old Mrs. Jordan objected to his coming to see her daughter, and at one time used a flat-iron on him, and he went back that night to try to settle matters up with her. The gunshot wound in Burge's head did not enter the skull, but depressed it, and a bullet was taken from his forearm.

Burge testified in his own behalf that he had lived peaceably with his wife, and told how he had kissed her good-night as Lena and she were going to 2006 R street, and how he looked back and saw his wife lying in the alley with a man, and how the man and he drew their revolvers and Burge's revolver went off, and how the appellant, the deceased, and Lena struggled in the yard, and his revolver was a second time discharged, and a third time went off. Burge didn't know when his wife was shot, but after he left the house he discovered that he himself was wounded. He went to tell Mary Jordan that her daughter had been accidentally shot, and found it necessary to take out his pistol to show how it happened, when Frank Jordan struck him with a chair and seized Burge's revolver and fired twice. He did not know Mary Jordan was shot, but knew Frank shot him, Burge.

There was not a particle of evidence in the record to corroborate Burge's incredible story. The evidence tends to show Burge was wounded during the scuffle with the two persons who came to Mrs. Jordan's rescue. This evidence proves that Burge, at 12 o'clock at night, deliberately killed his wife, in the presence of three witnesses, and, after stopping at his room a few minutes, went to the house of his wife's mother and, about a half-hour after the homicide, shot her as detailed by three witnesses.

Having summarized the evidence, we proceed to consider whether or not the court erred in permitting the evidence to be given to the jury of the appellant's assault upon Mary Jordan at her house, 1102 O street, about a half-hour after he had killed his wife at 2006 R street.

If it were possible for us to sustain this judgment and conviction of the appellant of the brutal crime for which he was indicted, we surely should be swift to affirm this judgment. But a rule of law which sharply differentiates our more merciful common law and the civil law of Continental Europe protects a person accused of crime with the presumption of innocence, and while meeting one distinct charge gives him assurance that no other will be or can be proven against him. We proceed to discuss this rule of law and its application to the evidence admitted by the court below in the trial of this case.

"The rule which requires that all evidence which is introduced shall be relevant to the guilt or the innocence of the accused is applied with considerable strictness in criminal proceedings. The wisdom and justness of this, at least from the defendant's standpoint, are self-evident. He can, with fairness, be expected to come into court prepared to meet the accusations contained in the indictment only, and, on this account, all the evidence offered by the prosecution should consist wholly of facts which are within the range and scope of its allegations."

Jurors are prone to conclude that if a person once committed a similar offense he committed the offense charged.

"To guard against this evil, and at the same time avoid the delay which would be incident to an indefinite multiplication of issues, the general rule (to which, however, some very important exceptions may be noted) forbids the introduction of evidence which will show, or tend to show, that the accused has committed any crime wholly independent of that offense for which he is on trial. To this general rule there are a very few exceptions which have been permitted from absolute necessity to aid in the detection and punishment of crime. These exceptions are carefully limited and guarded by the courts, and their number should not be increased." Underhill on Crim. Evidence, sec. 87.

The Government can not prove against a defendant any crime not alleged, in aid of the proof that he is guilty of a crime charged. Whatever tends directly to prove a defendant guilty of the crime charged, though guilty also of another, may be shown against him, but his cause can not be prejudiced by the evidence disclosing irrelevant guilt. Even where offenses are of a like sort, evidence to prove one is not

ordinarily admissible to prove another. If one be indicted for the murder of a particular person it is not admissible to prove that at another time he murdered, or attempted to murder, another person. Mr. Bishop says to permit such evidence would be to put a man's whole life in issue on the charge of a single wrongful act, and crush him by irrelevant matter which he could not be prepared to meet." 1 Bishop's New Crim. Proc., sec. 1120-1124.

This familiar rule that a person can not be convicted of one offense upon proof that he committed another is so well established that it needs no discussion here. It is well stated in *Shaffner v. Commonwealth*, 72 Pa. St., 63. . . .

This doctrine is not carried so far as to exclude evidence which has a direct tendency to prove the particular crime for which the prisoner is indicted.

The exceptions, however, to this rule are few, and they are well stated in *People v. Molineaux*, 168 N. Y., 293, thus—

"Generally speaking, evidence of other crimes is competent to prove the specific crime charged when it tends to establish (1) motive; (2) intent; (3) the absence of mistake or accident; (4) a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the others; (5) the identity of the person charged with the commission of the crime on trial."

It is obvious that the last exception has no application to the case we are here considering.

"Motive" is the state of feeling impelling towards an act, and "intent" is the mental state accompanying the act. Without more evidence than appears in this record, proof that appellant a half hour after killing his wife made an assault, with intent to kill, upon his wife's mother, would not help the inquiry into the motive with which appellant brutally killed his wife about a half hour before at a different place.

We have considered carefully whether, since in homicide the intent to kill is practically always an issue and the recurrence of like acts of the sort tends to negative indifference, accident, or any other form of innocent intent, it might be justifiable in this case to admit evidence of the later assault with intent to kill, to enlighten the jury touching the intent of appellant in the earlier actual killing. For this purpose prior assaults by the defendant upon the deceased, or assaults upon others at the same time and place, or even prior homicides, have been in rare instances admitted to throw light upon the intent of the defendant indicted and tried for a subsequent homicide. We have in vain sought for a case where a later crime like that of the assault upon Mary Jordan was admitted in proof, to aid in determining the intent of an earlier crime like this one for which the appellant was convicted. The record lacks such threats and declarations as might have made the later crime reflect light upon the intent of the appellant in committing the earlier crime.

The exception to the rule which permits proof of another crime in order to exclude the defense of mistake or accident in the perpetration of the crime for which the defendant is on trial could not apply to this case. That the appellant most brutally shot and killed the

deceased was proved clearly by all of the three eye-witnesses. There could be no pretense of mistake, and the jury could not possibly believe the unsupported pretext of the appellant that with his revolver he twice accidentally shot his wife. Upon this exception to the rule the Government would not be justified in assuming the risk of greatly prejudicing the jury in considering the degree of murder under the indictment.

The remaining exception to the rule, namely, a common scheme or plan embracing the commission of two crimes so related to each other that proof of one tends to establish the other, presents the ground upon which the Government introduced the evidence proving the assault with intent to kill upon Mary Jordan. This principle presupposes that a design or plan on the part of the defendant is to be shown as making it probable that the defendant carried out the design and plan and committed the act for which he stands indicted, and former similar acts are admitted in evidence so far as through common features they naturally indicate the existence of such a plan, design, or system, of which they are the partial fulfillment or means. According to this principle, subsequent criminal acts might be relevant upon the trial of a prior homicide, such as that we are here considering. The record, however, in this case contains but two circumstances tending to establish a plan or design of the appellant to kill his wife and his wife's mother by means of the revolver he bought on the morning, and with which he so brutally assaulted his wife and her mother the same night. The first circumstance is that he said to the deceased when he was following Lena Lawson and her to Annie Lawson's home, "Daisy, your sister and mother are the whole 'legation' of your leaving me;" and the other bit of evidence is the appellant's statement at the station house to Officer Murphy that old Mrs. Jordan objected to his coming to see her daughter, and that one time she used a flatiron on him, and he went back that night to try to settle matters up with her. Were the crime of appellant against Mary Jordan on trial, this evidence would be relevant and material, but the trial court can not, upon such slight testimony, conclude that the appellant committed both crimes in pursuance of a plan or scheme. These two circumstances are not sufficient proof of a plan or system connecting the assault upon Mary Jordan with the offense on trial, in the mind of the appellant, at the time of the homicide.

As Mr. Underhill says in section 88, supra:

"Some connection between the crimes must be shown to have existed in fact and in the mind of the actor, uniting them for the accomplishment of a common purpose, before such evidence can be received. This connection must clearly appear from the evidence. Whether any connection exists is a judicial question. If the court does not clearly perceive it, the accused should be given the benefit of the doubt, and the evidence should be rejected. The minds of the jurors must not be poisoned and prejudiced against the prisoner by receiving evidence of this irrelevant and dangerous description." Approved in *People v. Molineaux*, supra, 306.

As was said by the highest court of Pennsylvania:

"If the evidence be so dubious that the judge does not perceive the connection, the benefit of the doubt should be given to the prisoner instead of suffering the minds of the jurors to be prejudiced by an independent fact carrying with it no proper evidence of the particular guilt." *Shaffner v. Commonwealth*, supra.

Several of the cases relied upon by the Government afforded abundant proof of design, scheme, and plan to warrant the admission of one crime upon the trial of another committed as part of the common purpose or in pursuance of it. Briefly, in *Commonwealth v. Robinson*, 146 Mass., 571, it was proved that Sarah Robinson planned to obtain the insurance upon Freeman's life by murdering his wife, and later by murdering Freeman himself, to receive the insurance money after procuring herself to be made the beneficiary, but the scheme was quite fully proven before the evidence was held sufficient to warrant further evidence that the prisoner poisoned the wife, Mrs. Freeman, and later poisoned Freeman himself.

In *People v. Craig*, 111 Cal., 460, a case strongly urged on behalf of the Government, Craig shot his wife and her brother George Hunter, wounding the brother with one revolver in one hand and killing his wife with another revolver in the other hand; then, going into the kitchen, he said, "I have got revolvers enough for the whole family." It was next proved that three weeks prior Craig said, "the Hunters had taken his wife and children from him and he would not stand it much longer," and to another he said, "there would be something happen sure before it would end." And again, "if they interfered with him he would put a hole through them," meaning by "them" the Hunter family. Therefore, in rebuttal, the State was permitted to prove that the defendant, after killing his wife, left the house and drove three miles to Los Angeles, to the home of his wife's parents, and deliberately killed them both. Here there were threats recent and repeated against the other members of the Hunter family, and this testimony of the killing of his wife's father and mother in connection with the previous threats on the part of the defendant against the Hunter family was considered relevant for the purpose of showing the scope of those threats to determine whether the killing of those persons was a part of the execution of a single plan that had existed in his mind. The court said: "If the jury should so determine it would enable them more readily to determine whether the killing of his wife was also a part of that plan and whether the claim of the defendant that he had accidentally shot her was well founded." *People v. Craig*, 111 Cal., 468.

Of course, the jury were warned that the subsequent homicides were admitted only to be considered in relation to the intent of defendant in firing the shot that killed his wife.

We can not, in the absence of such threats in the case before us, extend the doctrine of the California case, which appears to be an extreme extension of the exception to the rule that one crime can not be proved by evidence of another crime.

In *State v. Eastwood*, 73 Vt., 205, Eastwood was convicted of murder in the first degree. He had married a daughter of Mrs. Brown. Her

sister Inez had married Franklin Fenn. Eastwood, in Middlebury, met his wife and her mother, and said: "I have come to break up the family." He then fired at both his wife, who fell, and Mrs. Brown, who was slightly wounded. He drove five miles to East Middlebury, to the home of Fenn, and there shot Mrs. Fenn, and shot and killed Franklin Fenn, for whose murder he was tried and convicted. Thereafter, he shot himself, not doing himself much harm. These prior assaults were admitted as parts of a single continuous transaction, which was to break up the family of Mrs. Brown, and the court said that because some of the facts indicated distinct and separate crimes that did not render the testimony inadmissible. There were other circumstances and among them evidence that Eastwood intended to kill himself after breaking up the family. It is to be observed that all of the crimes preceded the murder of Fenn, and the threats covered the whole scheme while the crimes admitted directly fitted and nearly carried out the scheme to break up the Brown family.

In *State v. Mace*, 118 N. Car., 1244, the defendants wantonly shot and killed the deceased as all parties were returning from a dance, and a few minutes thereafter defendants threatened to shoot the witness when they discovered he was on his way to inform the family of the deceased of the homicide. The defendants leveled their guns and told him to stop and warned him he should not pass for that purpose. Here the assault upon witness and the threat which deterred him from his mission, so that defendants might have time to escape, was evidence of a subsequent criminal act clearly connected in purpose and character with the offense charged, and was for this reason admitted, and it was also admitted to show that the homicide was wilful and not accidental. This case does not aid the Government's contention in the case before us, in our opinion. *State v. Mace*, supra, 1246.

It is true that a court of errors recognizes there must be a certain discretion on the part of the trial judge in ruling upon certain testimony to throw light upon a particular fact or to explain conduct. There is a limitation, however; if "it manifestly appear that the testimony has no legitimate bearing upon the question at issue, and is calculated to prejudice the accused in the minds of the jurors," the reason for not interfering with the discretion of the trial court does not apply. *Moore v. U. S.*, 150 U. S., 60.

In the case before us there is substantially no proof, nor is there such obvious relation between the two crimes that it may be clearly inferred that the one in any way characterized the other. Upon no theory can the relevancy of the testimony concerning the assault on Mary Jordan be sustained without breaking down firmly established rules of evidence. Nearly all the cases appear to adhere to the position we are in this case constrained to take.

It becomes our duty, therefore, because of the error in admitting the testimony objected to, to reverse the judgment and sentence in this case and to remand the case for a new trial in the court below, in accordance with the principles stated in this opinion, and it is so ordered. Reversed.

## RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

## Legal Notices.

## FIRST INSERTION.

**R. H. McNeill, Attorney**  
In the Supreme Court of the District of Columbia.  
**Charles H. Potter, Administrator of Fannie Potter,**  
Plaintiff, v. **Lyman F. Ellis, and District of Colum-**  
bia, Defendant. At Law, No. 48,061.

The object of this suit is to recover damages against the defendants in the sum of \$10,000 for the wrongful death of plaintiff's intestate, Fannie Potter, and to enforce collection of same against the real and personal property of defendant within the District of Columbia. On motion of the complainant, it is this 23d day of March, A. D. 1906, ordered that the defendant, Lyman F. Ellis, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in the case of default. Done this 23d day of

[Seal] March, 1906. THOS. H. ANDERSON, Justice.  
True copy. J. R. Young, Clerk, by Alf. G. Buhrman, Asst. Clerk. 14-3t

**R. H. McNeill, Attorney**  
In the Supreme Court of the District of Columbia.  
**Fred Kemp, Plaintiff, v. Henry R. Groce, Doing**  
Business as The Collateral Loan Co., Defendant.  
At Law, No. 48,067.

The object of this suit is to recover damages in the sum of \$10,000 for the wrongful and false arrest and imprisonment of the plaintiff by the defendant, Henry R. Groce, his agents and employees. On motion of the complainant, it is this 23d day of March, A. D. 1906, ordered that the defendant, Henry R. Groce, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in the case of default. Done this 23d day of March, 1906. THOS. H. ANDERSON, Justice. True copy. J. R. Young, Clerk, by Alf. G. Buhrman, Asst. Clerk. 14-3t

**E. F. Colloday and G. L. Tait, Solicitors**  
In the Supreme Court of the District of Columbia.  
**Charles C. Bassett v. Fanny Rice Bassett and E. Law-**  
rence Hunt.

No. 26,110. Equity Docket No. 58.  
The object of this suit is to obtain an absolute divorce on the ground of adultery. On motion of the complainant, it is this 3d day of April, A. D. 1906, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and The Washington Times once a week for three successive weeks. By the Court: HARRY M. CLABAUGH, Chief Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 14-3t

**W. Gwynn Gardiner, Solicitor**  
In the Supreme Court of the District of Columbia.  
**Julia B. Smith v. Henry M. Smith, Annie Smith.**  
No. 26,014. Equity Docket No. —.

The object of this suit is to obtain a divorce a vinculo matrimonii on the grounds of the adultery on the part of the defendant, Henry M. Smith, with one person who lived with the defendant, Henry M. Smith, as his wife, and whose real name is unknown to complainant at this time, but who was known as Annie Smith. On motion of the complainant, it is, this 5th day of April, A. D. 1906, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and The Washington Times once a week for three successive weeks. By the Court: HARRY M. CLABAUGH, Chief Justice. True Copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 14-3t

## Legal Notices.

**C. Clinton James, Solicitor**

In the Supreme Court of the District of Columbia.  
**Samuel Rothert et al., Complainants, v. Harriet P. Gunnell et al., Defendants.** Equity, No. 26,189. Docket 68.

The object of this suit is to establish the title of the complainants against the defendants by adverse possession to original lot eight (8) and the west thirty-six and one-half (36½) feet of original lot two (2), now being identical with lot 18 of Isabella Rothert et al.'s subdivision of said part of said lot two (2) as per plat in book 31, page 27, surveyor's office of the District of Columbia, in square seven hundred and ninety-two (792), Washington, District of Columbia. On motion of the complainants, it is, this 6th day of April, A. D. 1906, ordered that the defendants, Louisa H. McLaughlin, Elizabeth Miller, Hellen Karas, James H. Hill, William Brooke, Anna Brooke, Esther Brooke, Helen Brooke, Annie Brooke, John Van Ness Philip, Herman H. Philip, Gaston P. Philip, Elizabeth W. Philip, Madalina Van Ness, Christina D'Aubry, Louis J. D'Aubry, Edward Van Ness, Charles W. Van Ness, Margarita Van Ness, Anna Van Ness, Julia A. Van Ness, Anna W. Loney, Henry Loney, Meta Hutton, Nathaniel H. Hutton, Eugene Van Ness, Helen Van Ness, Julia I. Van Ness, Wm. P. Van Ness, Ann G. W. Van Ness, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs or devisees or allenees of such of the above-named defendants as are dead, and the unknown heirs or devisees or allenees of John P. Van Ness, Eugene Van Ness, Cornelius P. Van Ness, Matilda E. Van Ness, Washington I. Van Ness, Charles M. Van Ness, Richard Smith, John Bassett, George Andrews, and Josiah L. Deans, cause their appearance to be entered herein on or before the first rule day occurring three weeks after the first publication of this order, good cause therefor having been shown to the satisfaction of the court; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week in four successive weeks prior to said return day in The Washington Law Reporter and The Evening Star. By the Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 14-4t

**Robert S. Hume, Attorney**  
In the Supreme Court of the District of Columbia,  
Holding a Bankruptcy Court.  
In the Matter of the Estate of John F. McCormick,  
Alleged Bankrupt. Bankruptcy, No. 436.

The object of these proceedings is to have John F. McCormick declared an involuntary bankrupt. On motion of the petitioning creditors, it is this 5th day of April, A. D. 1906, ordered that John F. McCormick cause his appearance to be entered herein on or before the tenth day occurring after the last day of the publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and the Washington Post once a week for two consecutive weeks. By [Seal] HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 14-2t

**John A. Butler and C. W. Stetson, Solicitors**  
In the Supreme Court of the District of Columbia.  
**Margaret McDermott et al. v. The Unknown Heirs, Allenees, or Devisees of Thomas Turner, S. H. Platt, His Unknown Heirs, Allenees, or Devisees.** Equity, No. 26,143.

The object of this suit is to perfect complainants' title to the south 20 feet front by full depth of original lot 15, square 534, in the city of Washington, District of Columbia. On motion of complainants, by their solicitors, John A. Butler and Charles W. Stetson, it is, this 5th day of April, 1906, ordered that the unknown heirs, devisees, or allenees of Thomas Turner, deceased, and S. H. Platt, or if he be dead, his unknown heirs, devisees, or allenees, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of forty days, exclusive of Sundays and legal holidays, from the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order shall be published in The Washington Law Reporter and The Washington Times once a week for four successive weeks, sufficient cause having been shown for dispensing with a longer [Seal] period of publication. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 14-4t

**Legal Notices.**

**R. F. Downing, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Patrick H. Burke, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of April, 1906, MARY J. BURKE, 2323 H St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,568. Administration. [Seal.] 14-3t

**I. Williamson, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding the Probate Court.**  
**In the Matter of the Estate of Juno Stewart, Deceased.**  
**Administration, No. 13,321.**

Upon consideration of the report and petition filed herein by the executors of said Juno Stewart, it is by the court, this 3d day of April, A. D. 1906, ordered and decreed that the sale made by said executors to Joseph Musante of the real estate described in said report, to wit, the west half of lot four (4) in square one hundred and forty (140), be and the same is hereby ratified and confirmed, unless cause to the contrary be shown in this court on or before the 4th day of May, A. D. 1906. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said day. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. 14-3t

**T. J. Mackey, Solicitor for Complainant**  
**In the Supreme Court of the District of Columbia.**  
**William J. King v. Susan E. King and Richard S. Ward. No. 25,953. Equity Docket No. 57.**

The object of this suit is to obtain a divorce from the defendant, Susan E. King, on the ground of adultery. Provided that a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Times. On motion of the complainant, it is, this 5th day of April, A. D. 1906, ordered that the defendants do severally cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in

[Seal] case of default. By the Court: HARRY M. CLABAUGH, Chief Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 14-3t

**A. E. Shoemaker, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Lemuel P. Burriss, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of April, 1906. ALBERT E. SHOEMAKER, 416 5th St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,494. Administration. [Seal.] 14-3t

**William D. Hoover, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Bridget Dehlla Mullen, otherwise known as Della Mullen, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 29th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of March, 1906. THE NATIONAL SAFE DEPOSIT, SAVINGS AND TRUST COMPANY OF THE DISTRICT OF COLUMBIA, by George Howard, Treasurer. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,578. Administration. [Seal.] 14-3t

**Legal Notices.****SECOND INSERTION.**

**F. H. Marshall, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of James W. Reardon, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of March, 1906. FRED R. WALKER, 189 Todd Place N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,568. Administration. [Seal.] 13-3t

**Julius I. Peyser, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Hennie V. Prince, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 16th day of April, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies, or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 26th day of March, 1906. ABRAHAM D. PRINCE, by Julius I. Peyser, Attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,778. Administration. [Seal.] 13-3t

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Joseph Stump, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 16th day of April, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 28th day of March, 1906. CHAS. H. BAUMAN, Executor. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,647. Administration. [Seal.] 13-3t

**Richard A. Ford and J. J. Wilmarth, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**Charlotte M. Pace, Complainant, v. Albert E. Pace and Pearl Baker, Defendants.**  
**Equity. No. 26,063.**

The object of this suit is to obtain an absolute divorce upon the ground of adultery. On motion of the complainant, it is this 28th day of March, A. D. 1906, ordered that the defendants, Albert E. Pace and Pearl Baker, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post. By the Court. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 13-3t

The Law Reporter Printing Company's office is now the cleanest, most comfortable and best conducted one in the city of Washington, having a head for every department of the business. It will be kept so, in order that the public may be expeditiously served.

**Legal Notices.**

**John B. Lerner, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Washington Loan and Trust Company v. Charles W. Smiley, William H. W. Goodwin.**  
 No. 26,037. Equity Docket No. 53.

The object of this suit is to foreclose mortgage on lot numbered one hundred and thirty-seven (137) of Chapin Brown's subdivision of Mt. Pleasant, District of Columbia, and for the appointment of trustee to make sale thereof. On motion of the complainant, it is this 26th day of March, A. D. 1906, ordered that the defendant, Charles W. Smiley, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for

[Seal] three successive weeks in The Washington Law Reporter. By the Court: HARRY M. CLABAUGH, Chief Justice. True Copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 13-St

**Wm. A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary Knox Linn, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 22d day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 27th day of March, 1906. AMERICAN SECURITY AND TRUST COMPANY, by JAMES F. HOOD, Secretary; WILLIAMS, KNOX. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,001. Adm. [Seal.] 13-St

**Fred McKee, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of John A. Wineberger, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 23d day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of March, 1906. ANDREW H. RAGAN, 1223 11th st. N. W.; WILLIAM C. FLENNER, 1133 Euclid st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,524. Administration. [Seal.] 13-St

**J. Arthur Lynham, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Louise Depolloy Pollet, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23th day of March, 1906. J. ARTHUR LYNHAM, Columbian Building. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,152. Administration. [Seal.] 13-St

**Blair & Thom, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Augustine Heard, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23th day of March, 1906. AUGUSTINE A. HEARD, 58 No. Pearl st., Albany, N. Y. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,364. Administration. [Seal.] 13-St

**Legal Notices.**

**S. Herbert Giesy, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Louisa D. Lovett v. Hilliard Owen.**  
 In Equity. No. 23,578. Docket 53.  
 ORDER NISI.

This cause came on to be heard at this term upon the report of S. Herbert Giesy and Corcoran Thom, the trustees herein appointed by decree to sell lot forty-three (43) in Brainerd H. Warner's subdivision of lots in "George Truesdell's addition to Washington Heights," as per plat of said Warner's subdivision recorded in Liber County No. 11, folio 95, of the records of the office of the surveyor of the District of Columbia; that they have sold the said lot and improvements thereon subject to a 1st deed of trust securing \$3,500, for twenty-four hundred and fifty dollars (\$3,450); and thereupon, upon consideration thereof, it is, this 24th day of March, 1906, ordered, adjudged, and decreed as follows: That the said sale be ratified and confirmed unless cause to the contrary be shown on or before the 28th day of April, 1906. Provided a copy of this order be published once a week for three successive weeks before the last

[Seal] mentioned date in The Evening Star and The Washington Law Reporter. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Ck. 13-St

**THIRD INSERTION.**

**W. A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of George Brown, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Friday, the 13th day of April, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 21st day of March, 1906. AMERICAN SECURITY AND TRUST COMPANY, by Jas. F. HOOD, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 10,379. Administration. [Seal.] 12-St

**W. Calvin Chase and W. C. Martin, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of West Dent, otherwise known as Westley Dent, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of January, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of March, 1906. SAMUEL M. PIERRE, 2124 L st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,374. Administration. [Seal.] 12-St

**Wm. H. Linkins, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Joseph D. Milans, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of March, 1906. JOSEPH H. MILANS, McGill bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,558. Administration. [Seal.] 12-St

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W.



**Legal Notices.**

**John Raum, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Edward W. Summers, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of March, 1906. WILLIAM E. JORDAN, Anacostia, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,482. Administration. [Seal.] 12-3t

**W. Russell Graham, Attorney**  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.

In re Estate of James Storey, Deceased.  
Administration. No. 13,362.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for the probate of a paper writing purporting to be the last will and testament of James Storey, deceased, and Eva M. Payne, one of the persons named in said application as an heir at law and next of kin of the decedent, having been returned "Not to be found," it is, this 20th day of March, 1906, ordered that said Eva M. Payne appear in said court on or before Thursday, the 26th day of April, 1906, at 10 o'clock A. M., and show cause why such application should not be granted. Provided a copy of this notice be published once in each week for three successive weeks before the return day above mentioned in The Washington Law Reporter and The Washington Times, the first publication to be not less than thirty days before said return day.

[Seal] By the Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Attest: James Tanner, Register of Wills. 12-3t

**John C. Gittings, Solicitor**  
In the Supreme Court of the District of Columbia,  
Rosie May Hazard, Complainant, v. Richard J. Hazard, Defendant. Equity No. 23,960.

The object of this suit is to obtain a divorce a vinculo matrimonii. On motion of the complainant it is this 16th day of March, A. D. 1906, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order to be published in The Washington Law Reporter and The Washington Times once a week for three successive weeks. HARRY M. CLABAUGH, Justice.

[Seal] A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 12-3t

**P. R. Hilliard, Attorney**  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.

In the Matter of the Estate of Margaret Carroll, Deceased. Administration. No. 13,546.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by William H. McGrann and Mary Ellen Halpin, it is ordered this 21st day of March, A. D. 1906, that notice be and hereby is given to William Crahan (a brother), Daniel Crahan, John Crahan, Mary Crahan, Annie Crahan, James Crahan, Martin Crahan, William Crahan (a nephew), Ella Crahan, Julia Bresnahan, Lydia L. Cordes, May F. Cordes, Margaret Manning, Patrick Walsh, Mrs. Michael Sweeney, Margaret Lynch, James Dacey, Johanna Labrie, Nellie Cochran, John Dacey, Cornelius Dacey, Mary Limbaugh, Katie Belgney, Bridget Skelly, Howard Harpole, Tessie Harpole, Claude Harpole, Ora Harpole, Aro Harpole, and to the unknown heirs at law and next of kin of said Margaret Carroll, deceased, and to all others concerned, to appear in said court on Wednesday, the 25th day of April, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day.

[Seal] Herein mentioned, the first publication to be not less than thirty days before said return day. HARRY M. CLABAUGH, Chief Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 12-3t

**Legal Notices.**

**Brandenburg & Brandenburg, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John E. C. Smedes, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of March, 1906. E. B. SMEDES, 51 Wall st., N. Y. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,521. Administration. [Seal.] 12-3t

**W. A. McKenney, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Frederick M. Detweiler, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Friday, the 13th day of April, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 20th day of March, 1906. AMERICAN SECURITY AND TRUST COMPANY, by Jas. F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,737. Administration. [Seal.] 12-3t

**J. A. Maedel, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of George C. Walker, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of March, 1906. KATIE CLIPPER, 406 M st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,549. Administration. [Seal.] 12-3t

**Gittings & Chamberlin, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Harriet Ann Butler, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Tuesday, the 10th day of April, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 20th day of March, 1906. WALLACE MCK. STOWELL, by Gittings & Chamberlin, Attorneys. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,688. Administration. [Seal.] 12-3t

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## Legal Notices.

W. H. Landvoigt, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of Louis Schnebel, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of March, 1906. LIZZIE SCHNEBEL, 583 8th st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,481. Administration. [Seal.] 12-3t

Chas. W. Darr and Richard A. Curtin, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.  
Estate of Mary L. Porter, Deceased.  
No. 13,518. Administration.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Walter E. Ennis, it is ordered this 19th day of March, A. D. 1906, that notice be and hereby is given to — Porter, husband of Mary L. Porter, and to all others concerned, to appear in said court on Monday, the 23d day of April, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty [Seal] days before said return day. WENDELL P. STAFFORD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 12-3t

H. D. Moulton, Solicitor

In the Supreme Court of the District of Columbia.  
Harriet C. Loudin, Plaintiff, vs. Clifford P. Loudin, Adele Loudin, Blanche Loudin, Gladys Loudin, Henry Wyatt, Clyde Wyatt, Alma Wyatt, Frederick Wyatt, and Leroy Wyatt, Defendants.  
In Equity. No. 25,997.

On motion of the plaintiff, by Mr. Harry D. Moulton, her attorney, it is this 18th day of March, 1906, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Times; otherwise the cause will be proceeded with as in case of default. The object of this suit is to secure to the plaintiff, Harriet C. Loudin, assignment of dower in, and partition of, according to the interests of the parties hereto, the following described real estate, situate and lying in the city and county of Washington, District of Columbia, to wit: All that tract and certain piece or parcel of land and premises known and distinguished as and being parts of original lots numbered thirteen and fourteen (13 and 14) in square numbered one hundred and ninety-eight (198), beginning for the same on "L" street, forty-four (44) feet west from the northeast corner of original lot numbered fourteen (14), and running thence west along "L" street eighteen (18) feet, thence south one hundred and forty-six (146) feet and eleven (11) inches to a public alley, thence east along the line of said alley eighteen (18) feet, and thence north one hundred and forty-six (146) feet and eleven (11) inches to the place of beginning. Also the following described real estate, situate in the city and county of Washington, District of Columbia, to wit: All that parcel of land and premises known as being lot numbered eighty-nine (89) in W. O. Denton and Benjamin F. Leighton, trustees, subdivision of part of the tracts known as "Mount Pleasant" and "Pleasant Plains," as per plat recorded in liber county number six (6), folio six (6) of the records of the surveyor's office of the District of Columbia, said lot containing 29,530 square feet. Said defendants, Clifford P. Loudin and Adele Loudin, are of age. The other defendants are minors.

[Seal] By the court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 12-3t

Justice blanks of every description for sale at this office.

## Legal Notices.

Charles J. Murphy, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Mary W. Ryan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of March, 1906. CHARLES J. MURPHY, 412 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,446. Administration. [Seal.] 12-3t

## FOURTH INSERTION.

J. D. Sullivan, Solicitor

In the Supreme Court of the District of Columbia.  
Silas S. Dalsh v. Unknown Heirs, etc., of Martin Foley et al.  
Equity, No. 25,500.

The object of this suit is to establish the title of the complainant against the defendants by adverse possession in and to the south half of lot five (5) in Samuel Davidson's subdivision of lots in square 183, as per plat recorded in liber N. K., folios 19 and 20, of the records of the office of the surveyor of the District of Columbia. It appearing to the court that the summons issued herein has been returned not to be found as to the defendants herein named, and it further appearing to the court that upon good cause shown by affidavits herein filed it is not necessary that this order should be published twice a month for a period of not less than three months, on motion of the complainant, it is, this 14th day of March, A. D. 1906, ordered that the defendants, Martin Foley, junior, George Hatch, Samuel Hatch, Sarah J. Burdick, and Amanda Bennett, and the unknown heirs, devisees, and allenees of such of them as are dead, and the unknown heirs, devisees, and allenees of Martin Foley, senior, Martin Foley, junior, and James H. Murphy, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of forty days, exclusive of Sundays and legal holidays, after the day of the first publication of this order; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for four successive weeks before said return day in The Washington Law Reporter and Washington Times, said order to be published twice a month in the month of March, [Seal] 1906. HARRY M. CLABAUGH, Chief Justice. True copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 11-4t

T. Percy Myers and Benjamin S. Minor, Solicitors  
In the Supreme Court of the District of Columbia.  
Tillotson E. Brown, Complainant, v. the Unknown Heirs, Allenees, and Devisees of William B. Hurst, Deceased, Defendants. In Equity, No. 25,954.

The object of this suit is to establish title by adverse possession of the complainant to part of lot numbered one (1) in square numbered three hundred and ninety-seven (397), to wit: Beginning at a point on Eighth street northwest, twenty-nine (29) feet and two (2) inches north of the southeast corner of lot numbered one (1) in square numbered three hundred and ninety-seven, and running thence north along said Eighth street thirteen (13) feet and eleven (11) inches, thence west ninety-nine (99) feet and four (4) inches, thence south thirteen (13) feet and eleven (11) inches, thence east ninety-nine (99) feet and four (4) inches, to the place of beginning. On motion of the complainant, by his solicitor, it is, by the court, this 8th day of February, A. D. 1906, ordered that the defendants, the unknown heirs, allenees, and devisees of William B. Hurst, deceased, cause their appearance to be entered herein on or before the first rule day occurring after three months from the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published for three months, once a week for three successive weeks for the first month, and twice a month for each of the two succeeding months, in The Washington Law Reporter and The Washington Post. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk.

feb 16, 23; mar 2; apr 6, 13, may 4, 11

Justice blanks of every description for sale at this office.

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### Death of Col. Robert Christy.

The bar of this District has lost one of its honored members in the death of Col. Robert Christy, which occurred at his residence in this city on Tuesday, April 10, 1906. Colonel Christy was a native of Ohio, and was born in Cadiz, in that State, in 1832. He graduated from Miami University in 1849, at the age of 17; and after his admission to the bar practiced law in Hamilton and Cincinnati. He served two terms as a member of the Ohio legislature. In 1872 he removed to this District and engaged in the practice of his profession in this city. His ability as a lawyer speedily secured for him a considerable practice, and his many lovable qualities won for him a large place in the affections of his associates at the bar.

Colonel Christy will perhaps always be best known to his friends by his familiarity with proverbs, having compiled a volume containing many thousands of them gathered from all languages. In his last conscious hours he resorted to this manner of expression. He had conducted many earnest arguments with Robert Ingersoll, the great agnostic, and just before he lapsed into unconsciousness he grasped a small crucifix, and turning a smiling face to those about him, exclaimed, "And yet Ingersoll says there is no hereafter!" Colonel Christy was a unique character in many respects, and it is stated of him that in every divorce case handled by him he effected a reconciliation between the

parties. He had a large circle of friends, who will long cherish his memory.

### Purchase by Surety of Executor at Sale by Litter.

The Supreme Court of Kansas, in the case of *Fincke v. Bundrick*, 83 Pac., 403, sustains the proposition that a surety, though innocent, is chargeable with constructive notice of the fraud of his principal so far as to justify a decree requiring the surety to disgorge the fruits of his principal's wrongdoing. In that case it appeared that an executor, by falsely representing to the Probate Court that the estate was indebted, obtained an order for the sale of the testator's real estate, and thereafter filed a report stating that the land had been sold to the surety on his official bond as executor. The sale was duly approved, a deed delivered, and a report filed by the executor and approved by the court purporting to account for all the assets, including the proceeds of the real estate, and the estate settled. Thereafter, on a bill filed by a minor devisee, a decree was entered finding the transaction fraudulent, setting aside the executor's deed, and requiring an accounting by the purchaser for the rents and profits. This decree is affirmed by the Supreme Court, and after observing that the evidence as to whether or not the consideration was actually paid by the surety was unsatisfactory, it was held in effect that the relation between the principal and his surety and of both to the estate was such that a conveyance to the surety procured by the fraud of the principal could not stand, no matter how innocent in fact the surety might be. "One of the purposes of the law in requiring a bond to be given," says the court, "is that there shall be no fraudulent conduct to repair, and every safeguard to this end must be created and maintained. . . . So long as the surety is not allowed to speculate in the assets of the estate, or is obliged to inform himself of all the facts if he does speculate, his sole interest is in the rectitude and fidelity of his principal. Open to him a prospect of gain by freely bargaining with his principal, and he at once becomes concerned in the disregard of all those austere principles which must govern the conduct of those who undertake the management of trust estates. He becomes exposed to every temptation which would beset the executor himself if he were allowed to profit from official acts, and if he should yield, he becomes actively enlisted in the support of fraudulent conduct, against which he has engaged to save the estate harmless."

## Court of Appeals of the District of Columbia.

### THE CAPITAL CONSTRUCTION COMPANY, APPELLANT,

v.

JENNIE W. HOLTZMAN.

#### ELEVATOR ACCIDENT; EVIDENCE; FACT OF DEFENDANT BEING INSURED AGAINST ACCIDENT INCOMPETENT; REMARKS OF COUNSEL.

1. In an action for personal injuries sustained in the fall of a passenger elevator in an apartment house leased and operated by the defendant, it is error to permit the plaintiff, on cross-examination of a witness for defendant, to call forth testimony to the effect that the defendant company was insured against accidents to its elevator.
2. Such evidence being wholly incompetent for any purpose, a general objection only is sufficient to require its exclusion; and even if the testimony should be stricken out and the jury instructed to disregard it, the error in its admission would not be cured.
3. Questions intended to elicit the fact that the defendant company, sought to be held liable for injuries alleged to have been occasioned by its negligence in the operation of a passenger elevator, was protected by insurance against accidents to its elevator ought not to be asked, such evidence being wholly incompetent, and when asked the court should not inquire too closely into the ground upon which an objection is based.
4. While it may be permissible, on cross-examination of expert witnesses called by defendant, for the purpose of showing bias to prove that they are in the employ of an insurance company which insured the defendant company against accidents to its elevator, it is error to permit evidence as to the nature of that insurance and tending to show that it was not against breakage of the elevator, but against accidents to persons riding therein.
5. In an action for personal injuries occasioned by the fall of a passenger elevator, the fact that the defendant company was insured against accidents was brought out on the cross-examination of witnesses for defendant. In his closing argument to the jury counsel for plaintiff remarked, "We are told by these inspectors in the employ of this insurance company which is financially behind this action," to which counsel for defendant objected and excepted, and the court entered the exception on its minutes, but took no further action. Counsel for plaintiff then said, "If you object to it I will take it out," to which counsel for defendant replied, "You can not take it out." *Held*, that the statement of counsel for plaintiff, taken in connection with the admission of the incompetent testimony as to the existence of such insurance, tended to prevent a fair verdict, and was sufficient to require a reversal of the judgment for plaintiff.

No. 1581. Decided March 6, 1906.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 45,864, entered upon a verdict for plaintiff in an action for personal injuries. Reversed.

Mr. R. Ross Perry and Mr. R. Ross Perry, Jr., for the appellant.

Mr. J. J. Darlington for the appellee.

Mr. Justice DUELL delivered the opinion of the Court:

The appellant appeals from a judgment entered against it, in favor of the appellee, for the sum of \$10,000, in a suit brought in the Supreme Court of the District of Columbia to recover damages for injuries sustained by her while riding in an elevator in an apartment house leased and operated by appellant. The accident resulting in the injuries appears to have been caused by the overloading of the ele-

vator and the defective condition of some of the parts of the elevator machinery.

It is unnecessary, as we view the case, to inquire specially into the cause of the accident, for we think that the trial court's charge was fair and all that appellant had a right to ask. The assignment of errors predicated upon the alleged errors in the court's charge need not be particularly discussed, as we believe that they are not well founded.

The testimony as to extent of appellee's injuries is conflicting, as stated by the trial judge in his opinion denying a motion for a new trial. One ground upon which the motion was based was the alleged excessive damages found by the jury. In referring to that question the learned trial judge said:

"If I had assessed the damages in this case I should probably not have found so large a sum. I would not have been surprised at a verdict for five thousand (\$5,000) or six thousand (\$6,000) dollars, but was somewhat surprised when the verdict was announced for ten thousand dollars (\$10,000)."

Of the fourteen persons in the car the appellee was the only one to sustain any serious injury. While we are bound by the verdict, and can not consider whether or not the amount assessed by the jury is excessive, we are, in view of all the evidence and of the views expressed as to the amount by the trial judge, called upon to scrutinize closely the proceedings upon the trial, as disclosed by the record, to see that no evidence was improperly admitted and that the result was not improperly affected by anything that occurred during the trial.

If any such occurred it is, in our opinion, to be found in the testimony and proceedings relating to the question of appellant's being insured against loss occurring through accidents to its elevators. It is earnestly contended by appellant's counsel that various errors occurred during the trial in this respect. They are presented in the following of the assignment of errors:

1. The court erred in permitting the counsel for the plaintiff below to ask the witness, John H. Stokes, the following question: "Does this insurance company insure the defendant against accidents to its elevators?" and in permitting the said witness to substantially answer the said question affirmatively.

2. The court erred in permitting the witnesses Barrett and Beaman to be interrogated with respect to the existence of such insurance and to answer affirmatively.

3. The court erred in sua sponte asking the witness Beaman questions concerning the existence of such insurance and in admitting the answers of said witness concerning the same.

4. The court erred in not discharging the jury from the further consideration of the case at bar when its attention was called by counsel for the defendant to the language to the jury of counsel for the plaintiff in his concluding argument, of the following purport: "We are told by those inspectors in the employ of this insurance company, which is financially behind this action."

5. The court erred in not sua sponte discharging the jury when the question was asked by plaintiff's counsel of the witness Stokes, as

hereinbefore set forth, as to the existence of such insurance.

6. The court erred in not sua sponte charging the jury to disregard all evidence touching the existence of such insurance.

7. The court erred in not sua sponte charging the jury to disregard the aforesaid remark of counsel for the plaintiff in his concluding argument to them.

8. The court erred in refusing to grant the motions of the defendant to strike out the testimony relating to the existence of such insurance, and also to the number of rooms and tenants in the house in question.

These alleged errors of the court may be grouped under these heads:

First. Error in permitting witness Stokes to be interrogated as to the defendant being insured against accidents to its elevators.

Second. Error in permitting the witnesses Barrett and Beaman to give testimony relative to such insurance and its nature.

Third. Error arising out of the failure of the court on its own motion to either withdraw the case from the jury after plaintiff's counsel in his address to the jury had stated that the insurance company was back of the defendant, or in not charging the jury to disregard such statement.

Fourth. Error in not charging the jury to disregard all testimony relative to the existence of any insurance.

After a careful consideration of the record it is apparent that the fact of the existence of insurance against accidents arising out of the use of the elevators was so industriously called to the attention of the jury that we feel convinced that it was not without its effect. If to do this was error, and if such objections and exceptions as were necessary were duly taken, then we think the judgment must be reversed and a new trial had.

First. During the cross-examination of the witness Stokes, manager of the apartment house, the following occurred:

"Q. Who was Mr. Barrett, Mr. Stokes? A. Mr. Barrett is an elevator inspector, sir.

Q. An official of the District? A. No, sir.

Q. Whose elevator inspector is he? A. The Fidelity and Casualty Company of New York.

Q. Who are they? A. An insurance company."

"Q. Does this insurance company insure the defendant against accidents to its elevators?"

MR. PERRY, JR.: One moment; I object to that, your honor, unless he knows of his own knowledge.

MR. DARLINGTON: Of course if he does not know—

MR. PERRY, JR.: He can produce the policy if he has one.

"A. Yes, sir."

By MR. DARLINGTON:

"Q. Who is the custodian of that policy? A. Myself.

Q. Have you it with you? A. No, sir.

Q. Will you produce it before the close of the session? A. Yes, sir."

We think that these questions and answers were wholly inadmissible and were incompetent to prove or to tend to prove any issue in the case. Mr. Barrett had not been called as a witness.

The Supreme Court of Washington, in a well considered case (*Iverson v. McDonell*, 78 Pac. Rep., 202), said:

"It is a fundamental principle of law, too well established to require the citation of authority, that testimony should not be introduced in a lawsuit which is not pertinent to the issues involved, and it could make no difference, so far as the merits of this case are concerned, whether the judgment which the respondent hoped to obtain should be paid by the appellant or by an insurance company. The pertinent questions under the issues for the jury to determine were whether or not the appellant had been guilty of negligence which was the proximate cause of the respondent's injury, and whether or not the respondent had been guilty of contributory negligence. Any testimony tending to throw light upon these two propositions was pertinent and competent.

"To the effect that it is improper practice in an action for personal injuries for counsel, either by testimony or by remarks made to the jury, to give the jury to understand that an insurance company is defending the case, see, also, *George A. Fuller Co. v. Darragh*, 101 Ill. App., 664; *Cosselmon v. Dunfee* (N. Y.), 65 N. E., 494; *Sawyer v. Arnold Shoe Co. (Me.)*, 38 Atl., 333. It is said by counsel for the respondent that these cases are not in point. But while, in some instances, the question was presented in a different form, they all proclaim as reprehensible the practice of endeavoring to get before a jury the fact that the judgment sought to be obtained will have to be paid by an insurance company, instead of by the defendant. But, even in the absence of any authority, and if the question were presented to this court as a matter of first impression, we should, without hesitancy, conclude that such practice was not in conformity with general principles of law, and hinders, rather than aids, the jury in arriving at a just verdict."

In *Cosselmon v. Dunfee*, 172 N. Y., 507 (65 N. E., 494), the Court of Appeals of New York said:

"We affirm this judgment without opinion, but feel constrained to refer to an occurrence on the trial that has become too frequent in negligence cases.

"Counsel for plaintiff asked a witness for defendants this question: 'Do you know whether they carry insurance for accident to their employees?' This question was objected to as incompetent, and objection sustained.

"While the learned trial judge made a proper disposition of the matter, nevertheless the propounding of the question was calculated to convey an improper impression to the jury.

"The inquiry into the matter of insurance is not material, and the practice of asking a question that counsel must be assumed to know can not be answered is highly reprehensible, and where the trial court or appellate division is satisfied that the verdict of the jury has been influenced thereby it should, for that reason, set aside the verdict."

To the same effect *Wildrick v. Moore*, 66 Hun., 630.

But it is urged by appellee that there is no sufficient objection to the questions asked of Mr. Stokes.

The question whether the insurance company insured the defendant was, in our opinion, incompetent for any purpose. The objection was not based upon its incompetency; nevertheless, we think the question was one of those that requires only a general objection. It is one of those questions where an objection is an admission of the correctness of the statement embodied in the question. Such questions ought not to be asked, and when asked the court ought not to inquire too closely into the ground upon which the objection is based.

In *Manigold v. Black River Traction Co.*, 80 N. Y. Sup., 861, which was a case where a doctor visited the plaintiff in company with a representative of the defendant, the representative was asked whether the doctor did not go to settle with the plaintiff, and whether he was not representing an insurance company back of the defendant company. The objection to the question was sustained, and all the testimony on the subject was stricken out and the jury directed not to consider it. The appellate court reversed the judgment rendered in favor of the plaintiff. The court said:

"From the evidence contained in the record before us we are not prepared to hold that the verdict of the jury is excessive, and for that reason to reverse or modify the judgment. It is not necessary to pass upon that question at this time. It is apparent, however, that the real extent and character of the plaintiff's injuries is a matter of such uncertainty as to require that the determination of that issue should not be prejudiced by improper evidence or any procedure during the trial which might improperly affect the result. . . . The fact that the defendant in this action was insured was brought to the knowledge of the jury as conclusively by what occurred as if the question had been answered in the affirmative, and it is evident that the question was asked and the inquiry pressed, even after the ruling of the court that it was incompetent, for the very purpose of getting such fact before the jury. Immediately before the direct question was asked, the court had ruled that the inquiry as to who Dr. Rockwell represented was incompetent, and the objection to that question was sustained, and yet plaintiff's counsel then asked the direct question, which was, in effect, a statement that there was an insurance company back of the defendant. In order to protect the defendant, its counsel was forced to object to the question, and yet by doing so he, in effect, admitted the fact; otherwise no objection would have been made. It is true the learned trial court properly struck out the answer, and instructed the jury not to consider it; but plaintiff's counsel improperly got the fact before the jury—a fact which he knew he was not entitled to, and which the court had just excluded by its ruling. We think this constituted error which requires a reversal of the judgment."

We think it was error to permit the witness Stokes to be questioned as to the defendant being protected by an insurance company, and that, as the question was wholly incompetent, even if the jury had been told to disregard the testimony, and it had been stricken from the record, the error would not have been cured. We have no doubt that it, taken in connection

with the other proceedings complained of, might and probably did influence the jury in fixing the amount of damages.

Second. The second question to be considered refers to the questions asked of the witnesses Barrett and Beaman. It had already been shown that Barrett was an elevator inspector in the employ of the Fidelity and Casualty Company as an elevator inspector. Testimony had already been admitted showing that the Fidelity Company had insured the defendant against accidents occurring from the use of its elevators. It would therefore seem to have been unnecessary, so far as showing the interest of the witness, to again call to the attention of the jury that the defendant was protected by the insurance company. Its only result would be to influence the minds of the jurymen. The more the subject was dwelt on the stronger the impression produced upon the jury. The record shows that the following proceedings occurred:

And thereupon counsel for the plaintiff began the cross-examination of one of said expert witnesses, to wit, WILLIAM H. BARRETT, by asking the following questions:

"Q. You have not told us yet what your business is. A. I am an elevator inspector.

Q. For whom? A. For the Fidelity and Casualty Company."

To the giving of which answer the defendant, by its counsel, objected in the following words:

"MR. PERRY, SR.: I object, if your honor please, and move to strike it out. I do not think it of any importance in this case.

The COURT: Well, I think it may be. It shows what kind of work he is doing, and how he comes to do it.

MR. PERRY, SR.: I except, if your honor please.

MR. DARLINGTON. It goes a little beyond that. It simply shows that this witness is an employee of a company which is very much interested in this case, and biased.

The COURT: At any rate, I think it is competent upon cross-examination.

MR. PERRY, SR.: Of course, if your honor please, I must except to it, and it is understood that I do except, without repeating the exception."

But the court refused to entertain the said objection, or to grant the said motion; to which action of the court in allowing the said answer to be given, and in refusing to strike it out, counsel for the defendant then and there excepted, and the court entered the said exception upon its minutes.

And next the plaintiff, by her counsel, asked the following question:

"Q. I did not quite get the name of that company."

To the asking of which question the defendant, by its counsel, then and there objected, on the ground next hereinbefore specified; but the court overruled the said objection, and allowed the said answer to be given, over the objection of the defendant, and the witness answered:

"A. The Fidelity and Casualty Company."

To which action of the court the defendant then and there excepted, and the court entered the said exception upon its minutes.

And next the plaintiff, by her counsel, asked the following question:

"Q. What does it do? A. It employs me as an inspector."

And the said witness further testified that he believed the company insured elevators, but that he had never seen a policy that they had issued.

And thereafter the plaintiff, by her counsel, asked the following question:

"Q. Do you not know very well, Mr. Barrett, that at the time this accident happened, there was an insurance policy by this company on this very elevator?"

To the asking of which question the defendant, by its counsel, then and there, for the reason already stated, objected; but the court overruled the said objection, and allowed the said question to be answered, over the objection of the defendant, as follows:

"A. No, sir; I do not."

To which action of the court the defendant then and there excepted, and the court entered the said exception upon its minutes.

And next the plaintiff, by its counsel, asked the witness the following question:

"Q. Do you know that?"

To the asking of which question the defendant by its counsel, for the reason assigned, objected, but the court overruled the said objection, and allowed the said question to be answered, over the objection of the defendant, as follows: "No, sir; I did not see the policy;" to which action of the court the defendant, by its counsel, then and there excepted, and the court entered the said exception upon its minutes.

Whereupon the witness answered, "No, sir; I did not see the policy;" and the following colloquy ensued:

"MR. DARLINGTON: Is there any objection about that? (Addressing counsel for the defendant.)"

MR. PERRY, SR.: I do not think I should be asked that, when I am excepting to this.

MR. DARLINGTON: I am asking because Mr. Stokes undertook to bring that policy down with him, but he said he could not find it.

MR. PERRY, SR.: I did not hear anything about that.

MR. PERRY, JR.: You happened to be out at the time.

MR. PERRY, SR.: Yes; I did not hear anything of it at all.

MR. DARLINGTON: Yes."

Whereupon the plaintiff, by its counsel, asked the witness the following question:

"Q. You do not know, then, whether the company insured this elevator or not?" To the asking of which question the defendant, by its counsel, objected for the reason already given; the court overruled the said objection and allowed the said question to be answered, over the objection of the defendant, as follows: "A. I presume they do." To which action of the court the defendant, by its counsel, then and there excepted, and the court entered the said exception upon its minutes.

Whereupon the plaintiff, by its counsel, asked the witness the following question:

"Q. Have you any doubt about it?" To the asking of which question the defendant, by its counsel, for the reason already given, objected; whereupon the following colloquy ensued:

"MR. PERRY, JR.: He said he did not know of his own knowledge.

The COURT: Mr. Stokes said they did when he testified."

Whereupon the court permitted the witness to answer the said question, over the objection of the defendant, as follows: "A. I could not swear they do, because I have not seen the policy;" to which action of the court the defendant, by its counsel, then and there excepted, and the court entered the said exception upon its minutes.

Whereupon the following questions were asked and answers given:

By MR. DARLINGTON:

"Q. Were you requested by Mr. Perry to come, or by this insurance company? Did you come here at the request of Mr. Perry, or at the request of this insurance company? A. I came at the request of this insurance company."

Q. Oh! When you said you came at the request of Mr. Perry, what did you mean? A. Why, Mr. Perry requested the insurance company to have me come.

Q. Oh! Still, you do not know whether the insurance company had insured this elevator? A. I can not swear to it; no, sir.

Q. To whom did you make the report of your inspection? A. To the New York office.

Q. Of this insurance company? A. Yes, sir.

MR. PERRY, SR.: Of course it is understood that my exception is applying to every one of these questions and answers.

MR. DARLINGTON: You mean to every one which refers to this insurance company?

MR. PERRY, SR.: Every one since I excepted. Of course when you leave this subject—

MR. DARLINGTON: I understand it applies to my inquiries as to the relations of the insurance company to this elevator."

To the asking of each and every one of which of the foregoing questions the defendant, by its counsel, at the time of the asking of the same, objected, for the reason hereinbefore given; but the court, in each instance, overruled the said objection, and allowed the witness to answer the said questions, respectively, as hereinbefore set forth; to which action, in each case, the defendant, by its counsel, excepted, and the court entered the said exceptions seriatim upon its minutes.

We are convinced that this line of examination could not fail to prejudice the jury and to materially injure the defendant.

Then a Mr. Beaman was called, and, on cross-examination, he testified that he was employed by the Fidelity and Casualty Company. Conceding that it was proper to show his bias by showing his connection with that company, it was improper and incompetent to continue the line of examination, and it did not tend to prove any issue in the case to ask him, "What does that insurance company do? What kind of insurance?" At this point the court interrogated the witness as follows:

"Q. No; I do not mean that; but what do they insure? Do they insure the elevators against breakage? A. No, sir.

Q. Or do they insure people against accidents, or what is it? A. Yes, sir; the second

one is right. They insure people against accidents.

Q. They insure people against accidents in elevators? A. Yes, sir.

Q. Their business is not insuring the elevators against breakage? A. No, sir; no, sir.

Q. But insuring people against accidents? A. Yes, sir, as I understand it."

This was excepted to, and a motion made to strike it out. The court permitted it to stand, saying: "I think it is important for all these questions that I asked with reference to this man's business to remain in, in order for the jury to weigh his testimony. That is what I asked them for."

We can not agree with the trial justice. We are at a loss to comprehend how it was necessary or proper to so clearly place before the jury the proven fact that the insurance company was back of the defendant. The line of examination was properly objected to, and the objections being overruled, exceptions were duly taken. At the most it was only permissible to prove, for the purpose of showing the bias of the witness Barrett, that he was an employee of the Fidelity and Casualty Company, and that that company had insured the defendant's elevator. To show the nature of the insurance was not necessary to show the witness' bias. To again prove that there was an insurance company back of the defendant, and the continuance of the examination by counsel and court, shows to our satisfaction that the determination of the issue was prejudiced by the testimony complained of. For this, if for no other reason, the judgment should be reversed.

Third. It appears by the record that when counsel for the plaintiff addressed the jury he said: "We are told by these inspectors in the employ of this insurance company—which is financially behind this action"—and that thereupon counsel for the defendant said to the court: "I object to that, your honor, and except to it." The court entered the exception upon its minutes, but took no further action upon it; the statement was allowed to stand, and no comment upon it was made by the court to the jury. Counsel for plaintiff, however, said: "If you object, I will take it out," to which counsel for defendant replied: "You can not take it out." Thereupon counsel for plaintiff, resuming his argument, said: "We are told by these inspectors who are employed by this insurance company," etc.

We think the remark or statement objected and excepted to tended, when taken in connection with the improper and incompetent testimony hereinbefore referred to, to prevent a fair verdict. There is enough in this incident, following what had gone before, to warrant a reversal. The case at bar falls rather under the ruling of the Supreme Court in *Waldron v. Waldron*, 156 U. S., 361, than within our ruling in *Yeager v. U. S.*, 16 App. D. C., 356; 28 Wash. Law Rep., 554, and *Lorenz et al. v. U. S.*, 24 App. D. C., 337; 32 Wash. Law Rep., 822. In this case, as in the *Waldron* case, the objectionable statement was promptly objected to and exceptions taken. The statement in that case was not withdrawn, while in this case counsel only offered to withdraw it if objected to. It had been objected to, and the offer to withdraw

was only conditional. The evil had been done. In the *Yeager* case the court directed the jury to disregard the statement and directed them not to consider counsel's remark. Here the court did neither, but entered the exception on the minutes. We said in that case that the justice had done all that he was called upon to do. "He could not of his own motion, withdraw a juror and continue the case for trial before another jury, without affording the defendant, probably, good foundation for a plea of former jeopardy." Such a condition was not presented in this case. Furthermore, there was no exception taken in that case. In the *Lorenz* case the court interrupted counsel. We said had he not done so and had he permitted him to continue the line of argument objected to, the judgment would have had to be reversed. It further appeared that the incident was not mentioned in any grounds set up in the motion for new trial that followed. Here the action of counsel for plaintiff in making the statement is specifically set out as one of the grounds upon which the motion for a new trial was founded.

We conclude that the assignment of error based upon the remark of counsel, and the proceedings following it, is well founded.

It seems to us unnecessary to further consider the assignments of error. We have found sufficient in the record to call for a reversal, and have set forth enough to warrant such action. After a full and careful review of the proceedings upon the trial we are constrained to hold that the judgment appealed from should not stand. It follows, therefore, that the judgment must be reversed, with costs, and the case be remanded for new trial; and it is so ordered.

Reversed and remanded.

One who has only partially performed his contract to instal, for a gross sum, a heating plant in a building, to consist of boilers, radiators, and piping, at the time the building is destroyed by fire without the fault of either party, is held, in *Dame v. Wood* (N. H.), 70 L. R. A., 133, to be obliged to bear the loss, unless he shows that the material already in place could not have been removed for a reasonable sum, so that the owner of the building must be regarded as having accepted it as the work progressed.

A delivery and acceptance sufficient to satisfy the statute of frauds is held, in *Richardson v. Smith* (Md.), 70 L. R. A., 321, not to be effected by a seller of tomatoes in cans, giving the buyer two cans as samples, which the latter takes away with him, where they are not included in the bulk of the sale. Symbolic delivery by sample to satisfy the statute of frauds is the subject of a note to this case.

A deed of trust upon real estate is held, in *Benton Land Co. v. Zeitler* (Mo.), 70 L. R. A., 94, not to be such an outstanding legal title as will, even after condition broken, but before entry or foreclosure, defeat a recovery in an action of ejectment for the property, based on titles held subject thereto.



## Supreme Court of the District of Columbia.

BYRON S. ADAMS ET AL.,

v.

COLUMBIA TYPOGRAPHICAL UNION,  
NO. 101, ET AL.

## INJUNCTION; CONTRACTS OF EMPLOYMENT; INTERFERENCE BY THIRD PERSONS; PERSUADING EMPLOYEES TO QUIT SERVICE OF EMPLOYERS.

1. Where several persons agree and combine together to persuade workmen employed by another person to break their contracts of service for the purpose either of ruining the business of such other person or compelling him to employ them instead, a court of equity will enjoin them from so doing, and on disobedience of the injunction punish them for contempt of its order.
2. Where such workmen are not under binding contracts with such other person they may leave at any time, and it is not unlawful to argue with them and persuade them that it is for their interest to leave his service.
3. Where, however, the attempt is made to overbear the will of those who wish to enter or continue in their employer's service, the bound is overstepped, and the means used become unlawful.
4. In a proceeding by employing printers against a typographical union, many of whose members were formerly employed by complainants, but had gone on a "strike" to compel the adoption of an eight hour day, and against others named as defendants, to enjoin interference by them with the business of complainants, where a prima facie showing was made that workmen in the employ of complainants under contracts for stated periods of service had been induced by defendants to break their contracts and leave such service, and that other workmen who would have entered complainants' employ, or would have continued therein, have been withdrawn from such employment by acts amounting to coercion under the rule above enounced, held that the defendants would be enjoined pendente lite from interfering with complainants' business by attempting to persuade employees under contract with them to quit their service, or by attempting to coerce other employees into leaving their service or from engaging in their service.

In Equity. No. 26,005. Decided March 30, 1906.

HEARING on a motion for a preliminary injunction. Reversed.

*Mr. F. D. McKenney, Mr. J. Spalding Flannery, and Mr. Leon Tobriner* for the complainants.*Mr. J. H. Ralston and Mr. F. L. Siddons* for the defendants.

Mr. Justice STAFFORD delivered the opinion of the Court:

In preparing the following opinion the attempt has been made to use the language of the people rather than the language of the profession. Technical phrases have been avoided, and consequently it has been necessary to forego to some extent the terseness and precision which are to be gained by the use of such terms. This course has been adopted because the subject is one of interest to many who are unfamiliar with the terms of law, while perfectly able to comprehend and appreciate its foundation in reason and common sense.

This case has come before the court upon an application for an injunction. Those asking for the injunction are individuals, corporations, and firms engaged in the business of job printing in this city. Those against whom the injunction is asked are printers and a union of which they are members and, some of them, officers. The complainants may be referred to

as the employers and the defendants as the workmen. Most of the employers belong to an organization called the Typothetae, and the case is sometimes spoken of as the case of the Typothetae against the Union, but the Typothetae itself is not a party to the case. The workmen were formerly employed by those who are now asking the injunction, and a strike was ordered by the union because the employers would not adopt an eight hour day, and since the 4th of January, 1906, the workmen have been out on strike. The employers have filed a bill of complaint against the workmen, setting out various things which the workmen are claimed to have done by way of interference with the employers' business, and the workmen have filed their answer to these charges. Affidavits were filed in support of the bill, and others have been filed in support of the answer, and the case has been heard upon these papers. The bill was filed January 31, 1906, and, of course, the affidavits that were filed with it related entirely to matters that had occurred before that time; but the employers have taken other affidavits relating to matters that have occurred since the filing of the bill, and these also have been read in support of it. After the bill was filed the employers took additional affidavits in regard to matters that had occurred before they filed the bill, but these the employers have not been allowed to read because the court thought they ought not to be allowed to strengthen their bill by going back and bringing in new affidavits in regard to matters which they might have covered at the time the bill was filed. The workmen have been allowed to file affidavits answering all charges made against them either by the bill or by any of the affidavits which the employers have produced.

The substance of the employers' complaint is that when their workmen left them on strike they employed and brought in other workmen to take their places, and would have been able to carry on their business successfully and perform the contracts they had in hand if they had not been interfered with by the defendants; but that the defendants have interfered with their business by inducing or compelling their new employees to quit their service. Some of these new employees, the employers say, were under binding contracts to work for stated periods, so that they had no right to quit when they did. Others of them, the employers say, were not under binding contracts to work for any stated period, but would have continued to work if the defendants had not annoyed, molested, and in some instances threatened them to such an extent that, contrary to their own choice and preference, they left their employers' service. The employers also complain that the defendants have undertaken to interfere with their business by representing to the public, and especially to the employers' customers, that if they continue to patronize the employers, they will have difficulty and annoyance in getting their work done, and they complain that this representation is so expressed as to constitute a threat. The individual defendants all belong to the union, known as Columbia Typographical Union, No. 101, and while they are on strike they are receiving benefits under the

rules of that organization. The employers complain that the defendants maintain pickets on the streets and in the vicinity of their respective shops, who meet their workmen when they are on their way to and from work and insist on talking with them and attempting to persuade them to leave their jobs and join the union. The employers complain that even after they have been told repeatedly by their workmen that they do not care to discuss the matter with them, and wish only to be let alone, the pickets insist on meeting them, and following them about the street, sometimes in groups of two or three, sometimes in larger numbers, and arguing with them and importuning and entreating them to leave their employers and join the union. The employers complain that in some cases such pickets or committees have surrounded their workmen and carried their importunities so far as to amount to intimidation and coercion, and that in many cases their workmen have yielded to such pressure and left their service. The employers complain that in some cases the defendants or other members of the union have used threats, sometimes clear, and sometimes veiled, but well enough understood by their workmen; that these threats have led their workmen to apprehend with some reason that if they continued in their refusal to join the union they would be hardly dealt with by that body or its members, and might suffer physical injury. The affidavits introduced by the employers, when considered by themselves, certainly have a tendency to establish all these charges.

On the other hand, the substance of the defendants' claim is that they have never interfered with the employers' business in any of the ways charged. They say that they have never attempted to persuade any of the employers' workmen to quit their service if they knew or believed such workmen to be under binding contracts with their employers. They say that the contracts under which such men were working were not binding. They admit that they have constantly and consistently attempted to persuade the employers' workmen to leave their service and join the union, but they say that they have used only peaceable persuasion, that they have not annoyed, harassed, or molested such workmen, although they have freely talked with them whenever they could obtain a hearing. They deny that they have ever made use of threats of any sort, and although they admit that all their efforts and the strike itself have been directed to the end and object of compelling the employers to adopt an eight hour day, yet they have not employed any of the forbidden means complained of by the employers. The affidavits filed in support of the answer are drawn with a view to meet the various charges, and in many instances are specific and meet the issue squarely.

There is no great difficulty in stating the rules of law which apply to a case like this. They are only the rules of reason and justice, which must commend themselves to all unprejudiced persons who value their freedom. If A desires to employ B to work for him, and B desires to be employed by A to work for him on his terms, C has no right to interfere between them. It makes no difference that C formerly

worked for A nor that he would be glad to work for him again in place of B. The right of B to work for A, and the right of A to have B work for him, under those circumstances can not be questioned. C can have no excuse for interfering with their arrangement. To speak bluntly, it is none of his business. If A represents ten men and B represents a hundred, the rule is exactly the same. If B has entered into a binding contract with A to work for him for a stated period, he can not break that contract without making himself liable in damages. A has a property right in that contract. If C persuades B to break such a contract, C himself becomes liable to A for the damages. There is nothing new about this rule of law. It has been recognized in England and in this country for centuries. If several men agree and combine together to persuade A's workmen to break their contracts of service for the purpose of ruining A's business and compelling A to employ them instead, the court will issue an injunction forbidding them to do so; and if they disobey the injunction the court will punish them for contempt of its order. The reason why the court will issue an injunction in such cases is that it would be difficult and perhaps impossible to protect A by any other means. If they should be allowed to accomplish their purpose, A would be obliged to sue them for damages, and he might be obliged to bring a great many suits, and it might be impossible to determine how much his business was worth. A has a right to be let alone and allowed to conduct his legitimate business in his own way, without waiting till it has been ruined before seeking the aid of a court. These rules of law are nothing new. They have been established by a multitude of decisions in England and in this country.

In such cases the parties attempting to break up A's business are using unlawful means—that is, they are inducing A's workmen to break their contracts; but how is it in those cases in which A's workmen are not under binding contracts with him? In such cases the workmen have a right to leave at any time, and it is not unlawful to argue with them and persuade them that it is for their interest to leave. The result may be that A's business will be ruined just as truly as in the other case, but no unlawful means are being used. Men have a right to form and entertain their own opinions and to discuss and to advocate them, and to convince and persuade others to adopt and follow them, even though the result may be pecuniary loss or ruin to the employers. Even when the object and purpose of such argument and persuasion is to make it impossible for the employer to carry on his business without coming to the terms proposed by the advocates, the law can not interfere. The right of free opinion, and free speech, and free action, within the bounds of law, are of more importance than any man's business, and so the law will not undertake to protect his business at the expense of these.

But the moment the attempt is made to overbear the will of those who wish to enter or continue in the employers' service that moment the bound is overstepped and the means used become unlawful. B has just as good a right to work for A as C has to refuse to work for him,

and any attempt to compel him to leave the service when he desires to remain in it is unlawful. It is a wrong against B and it is a wrong against A. It makes no great difference what the means employed may be. It may be done by threats of injury; it may be done by calling vile names; it may be done by obtruding constantly and offensively upon his presence; it may be done by calling attention to him in public in disagreeable ways; it may be by following him about the street or waiting for him where he must pass; it may even be done by importunities and entreaties if made and offered by such numbers and in such a manner as to be a serious source of annoyance and molestation tending to destroy that peace of mind which law-abiding citizens of a free community have a right to dwell in. In short, it may be done by any means which have the natural effect to override and overbear the will of a man of ordinary firmness and move him to do what he does not wish to do for the sake of escaping from those who thus pursue and worry him.

It may be that C really believes that it is for the interest of B, as well as for the interest of C, that B should quit the employment of A. It may be that C believes that it is for the interest of all his fellow workmen that B should quit the service of A, and that nobody should work for A upon the terms which A offers. C may be thoroughly convinced that the conditions of labor will be greatly improved if A is compelled to conduct his business in some other way. All these considerations are of no consequence in determining what the law is and should be in a case like the one supposed. There is something more important than fair wages, and that is the right to work for any wages the workman is willing to accept. There is something more important than an eight hour day, and that is a free day. Any enhancement of wages, any lessening of the hours of labor, any improvement in the conditions of employment, would be too dearly bought by the surrender of the smallest fraction of individual liberty under the law. Workmen themselves are the last men in the world who should willingly suffer the loss of such a right. That is about all they have gained, or that has been gained for them, in the long struggle for rights which has been going on since the beginning of organized society. Individual men, even great classes of men, may lose sight of its importance for a time in their desire to secure some coveted advantage, but the law does not lose sight of it, and so long as the ancient landmarks of our jurisprudence are observed these rights will be safe.

No better definition of freedom has ever been given than this: That one man's liberty ends where another man's liberty begins. Union men would think themselves unjustly treated if they should be importuned and besought, picketed, followed about the streets, and made objects of ridicule and contempt because they refused to leave the union, or because they refused to continue in the service of an employer they did not care to serve. They should be willing, and the law requires them, to treat their fellow-laborers as they would insist upon being treated under the same circumstances. It makes no difference how large may be the majority of those who be-

lieve that their interests are best protected inside the union nor how few and deluded are those who take the opposite view. It makes no difference how great an obstacle to the laudable purposes of the union a few misled or disloyal associates may be. It is a question of individual right. Those who wish to surrender a part of their individual freedom of action for the sake of the larger benefits that may be gained through union have an unquestioned right to do so. The law recognizes their right and gives standing to the union itself, but the right of those who choose to remain outside is just as sacred and inviolable in the eyes of the law.

The real difficulty in the present case has been for the court to satisfy itself by the mere reading of affidavits exactly what has occurred. Such of the parties as have shown themselves in court have presented a very favorable appearance. It is difficult to believe that such men have deliberately intended to transgress the law. So far as they may have done so they must have been carried away by zeal for their cause, and probably without fully appreciating the meaning and effect of their acts. But in deciding what probably did occur we are to remember that the union and its members were carrying on what seemed to them a sort of warfare to secure better conditions for themselves and their fellow-craftsmen. Being out of employment themselves, many of the defendants devoted their whole time to winning the strike. It was a matter of intense personal interest to them. They appointed committees which they themselves styled "vigilance committees," and other committees on the eight hour day. They were so eager to prevent the complainants from securing employees to take their places that they boarded the trains and traveled many miles away from the city to meet and argue with men who had been employed to come and work for the complainants. They employed every form of argument and persuasion to induce them not to enter the employment at all, or, if they had already entered it, to abandon it at once. They endeavored to persuade the complainants' workmen to join the union and take the strike benefits, although such workmen were men who they now say were entirely unworthy to associate with honorable men. They were willing to pay one man over \$40 to induce him to leave the city, beside cashing for him an order upon his employer for nearly \$20 of wages. They followed and besieged the workmen with arguments and entreaties whenever they appeared upon the street, and carried on a systematic campaign with the avowed purpose of depriving the complainants of all their workmen. It seems entirely clear that in many instances they pursued this course with those who had plainly told them that they did not care to be argued with and only desired to be let alone. These things are referred to as showing the eagerness and zeal with which the union and its members have been animated. When the complainants' employees have given as a reason for not joining the union the fact that they were already under contract with the complainants, or some of them, to work for stated periods, the defendants have been quick to inform and earnest to convince them that their supposed

contracts were absolutely worthless. Some contracts which have been shown the court are beyond all doubt binding contracts, and if the defendants believed that they were not, that belief can hardly excuse them. Some of the affidavits made by the defendants in reply to those supporting the bill do not, like the others, meet the issue squarely. They do not attempt to state the conversation which did occur, but characterize it with general expressions which quite likely take their color from the interest of the affiants. In many instances the defendants have succeeded in persuading or inducing employees of the complainants to go away. A considerable number of those so quitting have made affidavit that they did so of their own free will and accord. Others say that they left under the sort of pressure that has been referred to above. It was naturally to be expected that those who were persuaded to quit the complainants and join the union would not willingly give further aid or comfort to the side they had left. It has been strongly argued that it is absurd to suppose that any unlawful pressure could have been used upon those who did finally consent to join the union or who did, after the acts complained of, go to the union headquarters and talk freely with the officers of that body. Such argument proceeds upon the theory that the intimidation must have been of personal violence, and of such a character as to entirely drive away the person against whom it was used; but that is not the most common nor the most effectual method of overbearing the will of the new employee. Such threats, if resorted to at all, would be the last resource, and would only be used against those who could not be brought in by the milder forms of coercion. The court is inclined to believe that on some occasions there were covert suggestions of personal injury as being likely to result to those who continued to oppose the purpose of the union; but however this may be, it has little doubt that workmen in the employ of the complainants who were bound by contract to serve them for stated periods have been induced by the defendants to break their contracts and leave the service, and that many others who would have entered the service or were already employed and would have continued in the employment, have been withdrawn from the service of the complainants by acts of the defendants which have amounted to coercion under the rule above stated.

It would be tedious and would probably serve no useful purpose to analyze the affidavits and make distinct findings of fact in regard to particular witnesses. The question is not whether the proof is so satisfactory that if the proceeding were one brought to have the defendants punished for contempt of a previous injunction the facts would be found sufficiently established to justify fine or imprisonment. It is rather a question of probable cause. The application is for a preliminary injunction to remain in force until the case can be fully tried. Upon all the testimony taken together does it fairly and reasonably appear that the bounds of law recognized and stated above have been overstepped so often and to such an extent as to justify the belief that the complainants' rights are being invaded and will continue to be

invaded and their business threatened with ruin unless the court shall interfere? After a careful and deliberate examination of the testimony the court finds itself possessed by an abiding conviction that the case is one which calls for its aid, and that the defendants ought to be enjoined, pending the suit, from interfering with the complainants' conduct of their business by attempting to persuade their employees who are under contract to quit their service, or by attempting to coerce their other employees into leaving their service, or attempting to coerce others from engaging in their service.

The bill also prays for an injunction against the use of the boycott. Some expressions in articles issuing from the defendant union during the early stage of the controversy hinted of interruptions and delays that would attend the performance of work by the complainants for their customers, and upon that ground recommended such customers to employ only union shops. But the later emanations from the union seem to have kept carefully within the bounds of the law, and it is considered unnecessary at this time to issue an injunction against a boycott. If the occasion for such an injunction should arise it can be moved for hereafter.

Testimony given before a coroner's jury, by one subsequently accused of the crime then under investigation, is held, in *Tuttle v. People* (Colo.), 70 L. R. A., 33, to be inadmissible at his trial, under a constitutional provision that no person shall be compelled to testify against himself in a criminal case. The other authorities on admissibility, on trial for murder, of testimony of accused at coroner's inquest, are collated in a note to this case.

A bank which, with knowledge that a person holds negotiable paper simply as agent, discounts the paper for the agent's own benefit, relying on his statement that he has secured authority to discount the paper for himself, is held, in *Merchants' & M. Nat. Bank v. Ohio Valley Furniture Co.* (W. Va.), 70 L. R. A., 312, to act at its peril.

A by-law of a mutual benefit society providing for the expulsion of members for defaming members of the directing council, or any member whatsoever, for reasons connected with the society, causing dissensions and disorders in the midst of the association, is held, in *Del Ponte v. Societa Italiana di Marconi* (R. I.), 70 L. R. A., 188, to be reasonable.

An undertaking by a ticket agent, upon receiving money to pay the passage of a third person from a point on another road to the point where the money is received, that he will instruct the initial carrier to deliver a ticket to the intending passenger, is held, in *Brezewitz v. St. Louis, I. M. & S. R. Co.* (Ark.), 70 L. R. A., 212, not to render his employer liable for delay of the initial carrier in complying with the instructions.

**Insurance Policy—Condition—Validity.**

A policy issued by a life insurance company contained a provision to the effect that it should be void "if there is in force upon the life of the insured a policy previously issued by this company, unless the policy first issued contains an indorsement signed by the president or secretary authorizing this policy to be in force at the same time." In an application for insurance on the life of the applicant's mother the question was asked: "Is life proposed now insured in this company?" To this question the applicant answered: "No." After the death of her mother she discovered for the first time that she was mistaken in her answer to the question, and that a prior policy had been issued on the life of her mother in favor of her sister, and that there had not been indorsed on that policy a permission for the second policy to be issued. The Maryland Court of Appeals held in this case (*Monahan v. The Mutual Life Insurance Company of Baltimore*) that the company was chargeable with knowledge that the first policy was outstanding without the indorsement thereon authorizing the issuance of the second policy, and that as it had accepted forty-one premiums from the beneficiary named in the second policy, it was estopped from insisting that that policy was void notwithstanding the condition therein above mentioned. A judgment in favor of the insurance company was therefore reversed and a new trial ordered.

**Insurance—Action on Policy—Limitation by Contract.**

In *Lynchburg Cotton Mill Co. v. Travelers' Ins. Co.*, decided by the U. S. Circuit Court, W. D. Virginia, in September, 1905 (140 Fed., 718), it was held that a clause in an insurance policy, providing that an action thereon shall be barred, unless commenced within thirty days after the right of action accrues, creates a contract limitation analogous to a statutory limitation, and that conduct of the company, inducing delay in bringing suit beyond such time for the stated purpose of enabling it to investigate the claim or to negotiate for a settlement, while a waiver of such delay, is to be given only the effect intended and understood by the insured, and is not an entire abandonment or annulment of the limitation clause, but merely suspends its operation; and the limitation begins to run on a clear announcement by the company of its refusal to pay or settle the claim.

**Note—Indorser's Death—Evidence.**

In the case of *Keyser et al., Administrators, vs. Warfield*, lately decided by the Maryland Court of Appeals, it appeared that a bank in Baltimore, to which application was made for the discount of two notes signed by the president and the treasurer of a manufacturing corporation, declined to discount the notes unless the payment of the same was secured by the personal indorsements of the officials mentioned. The latter thereupon indorsed the notes, which were discounted by the bank. The corporation was in financial difficulties when the notes were given, and shortly thereafter the treasurer, Keyser, left the corporation, whose assets were taken over by another company.

The notes were not paid by the corporation, Keyser refused to pay them, and finally the president, Warfield, paid them and brought suit to recover from Keyser one-half of the sum paid by him in discharge of the indebtedness upon the notes. He recovered judgment, which was reversed on appeal, a new trial being ordered. A retrial resulted in a second judgment for the plaintiff, from which an appeal was also taken by the administrators of the former defendant, Keyser, he having died in the interval between the first and the second trial. The Court of Appeals held that the question as to whether the parties were joint makers or simply indorsers or guarantors was properly submitted to the jury, but that the judgment should be reversed on the ground that the original defendant, Keyser, being dead, the plaintiff, Warfield, was thereby disqualified from testifying, as he was not called by the opposite party, and that the testimony given by Keyser at the former trial was not introduced in evidence.

**Negligence—Bathing Resorts—Care Required—Contributory Negligence.**

In *Larkin v. Saltair Beach Co.*, decided by the Supreme Court of Utah in December, 1905 (83 Pac., 686), it was held that where defendant maintained a public bathing resort on a lake, to which persons were invited to bathe for an admission fee charged, defendant was bound, in the exercise of ordinary care, to keep some one on duty to supervise bathers and immediately to rescue any apparently in danger, and to make prompt and reasonable efforts to recover any of such patrons on being informed that they were missing or in danger. It was accordingly decided that where defendant maintained such a resort, but took no steps to mark safety limits or to provide for the rescue of bathers, and, on being notified that intestate was in danger of drowning, and was missing, sent no one in search of or to his relief until several hours had elapsed, defendant was guilty of such negligence as warranted a recovery for decedent's death.

It appeared that intestate and two companions started to bathe at defendant's resort, and while within the territory where people generally were invited to bathe, and, without knowledge or notice of danger, floated into an unmarked dangerous place, from which deceased was unable to escape, both because of his inability to swim, the subsequent exhaustion of his companion, and the action of the wind, which suddenly arose and drove both deceased and his companion out into the lake and finally against an island, where deceased was drowned. It was held that deceased was not guilty of contributory negligence as a matter of law.

**RULE OF COURT.**

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

**Legal Notices.****FIRST INSERTION.****Douglas & Douglas, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of David H. Fenton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 9th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of April, 1906. KATHARINE JORDAN FENTON, 1415 Chapin st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,592. Administration [Seal.] 15-8t

**Lambert & Baker, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Edward Shea, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of April, 1906. HELEN F. SHEA, 335 Maryland ave. S. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,544. Administration. [Seal.] 15-8t

**John E. Taylor & E. B. Sherrill, Solicitors  
In the Supreme Court of the District of Columbia.  
Mary A. Knopp, Complainant, v. Elizabeth A. Durkin et al., Defendants. Equity, No. 25,900.**

John E. Taylor and Edgar B. Sherrill, trustees, having reported to the court the sale of the real estate described in the bill of complaint and answers in the above entitled cause, to wit, all that certain piece or parcel of land and premises situate and being in the City of Washington, in the District of Columbia, known and distinguished as and being part of lot numbered 188, in square 108, in what is known as Beatty and Hawkins' addition to Georgetown, now part of Washington, D. C., bounded as follows: beginning at a point on 3rd street at the end of 40 feet measured north from the intersection of 3rd and Q streets, and running thence on said 3rd street north 26 feet 8 inches; thence west to the rear line of said lot; thence south 13 feet 4 inches; thence southeast and east in accordance with the original record line of said part of said lot to the point of beginning (said premises being known as No. 1604 3rd street N. W.), to Mary A. Knopp for the sum of three thousand three hundred and seventy dollars (\$3,370.00), it is by the court this 7th day of April, 1906, adjudged, ordered, and decreed that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 8th day of May, 1906; provided a copy of this order be published once a week for three successive weeks before said last mentioned date in The Washington Law Reporter. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 15-8t

**Howard B. Hodge, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of William H. Ryne, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of April, 1906. RICHARD C. RYNE, Takoma Park, Md. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,594. Administration. [Seal.] 15-8t

**Legal Notices.****H. G. Kimball, Solicitor****In the Supreme Court of the District of Columbia.  
Francis I. Willis, Complainant, v. Etta Brent Heskell et al., Defendants. Equity, No. 26,088.**

The object of this suit is to establish of record the title in fee simple of the complainant to lot numbered eighty-three (83) in Henry L. Mann's subdivision of part of original lot twelve (12) in square five hundred and fifty-four, in the city of Washington, District of Columbia. On motion of the complainant, by his solicitor, it is, this 9th day of April, A. D. 1906, ordered that the defendants, Etta Brent Heskell, the unknown heirs, alienees, and devisees of Nottley Young, deceased, and the unknown heirs, alienees, and devisees of Samuel Burch, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order to be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star, good cause for shortening the period of publication having been [Seal] shown. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 15-8t

**O. H. Stanley, Attorney  
8 E. Lexington St., Baltimore, Md., Care of Fillmore Bell.  
Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Cornelia Mossell, Deceased.  
No. 13,576. Administration Docket.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Charles W. Mossell, it is ordered this 12th day of April, A. D. 1906, that Richard Morris, Rev. B. F. Lee, Alphonso Tucker, and all others concerned, appear in said court on Wednesday, the 16th day of May, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 15-8t

**Leon Tobriner, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Plus Stang, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 30th day of April, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies, or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 10th day of April, 1906. CARL HAMMEL, by Leon Tobriner, Attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,722. Administration. [Seal.] 15-8t

**Millan & Smith, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscribers, of the State of Pennsylvania and the District of Columbia, respectively, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Frederick A. Stier, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 6th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 6th day of April, 1906. FERNANDO H. STIER, Pa. Bldg., Phila., Pa.; WILLIAM W. MILLAN, Columbian Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,580. Administration. [Seal.] 15-8t



**Legal Notices.****Carlisle & Johnson, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Margaret McAllister, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand, this 3d day of April, 1906. BRIDGET McALLISTER McCORMICK, 700 E St. S. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,551. Administration. [Seal.] 15-St

**J. J. Darlington, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Claas Denekas, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 4th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 4th day of April, 1906. ERNEST A. SELLHAUSEN, 640 G St. N. W.; GUSTAV H. SCHULZE, 1751 L St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,406. Adm. [Seal.] 15-St

**Edward S. Bailey, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of George Thomas Clark, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of April, 1906. E. ELMO CLARK, Pacific Bldg. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,597. Administration. [Seal.] 15-St

**S. E. Thomas, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John E. Burns, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of April, 1906. MICHAEL T. BURNS, 328 Md. ave. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,587. Administration. [Seal.] 15-St

**E. L. Gies, Attorney  
In the Supreme Court of the District of Columbia.  
Minnie Adelaide Goodman, Complainant, v. Robert D. Goodman and Cornelia D. LeGourd, Defendants. Equity, No. 28,108.**

The object of this suit is to obtain a divorce "a vinculo matrimonii" from the defendant, Robert D. Goodman. On motion of the complainant, it is this 10th day of April, A. D. 1906, ordered, that the defendants, Robert D. Goodman and Cornelia D. LeGourd, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order to be published in The Washington Law Reporter and The Washington Times, once a week for three successive

[Seal] weeks. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Amt. Clerk. 15-St

**Legal Notices.****E. H. Thomas and James Francis Smith, Attorneys  
In the Supreme Court of the District of Columbia,  
Holding a District Court.**

**In Re the Widening and Extending of an Alley in Block 20 in Columbia Heights and Block 19 in Todd and Brown's Subdivision of Pleasant Plains, in the District of Columbia.**

District Court. No. 681.

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of an Act of Congress approved February 23, 1905, entitled "An Act to amend Chapter Fifty-five of an Act to establish a Code of Law for the District of Columbia," have filed a petition in this court praying the condemnation of the land necessary for the widening and extending of an alley in block 20 in Columbia Heights and block 19 in Todd and Brown's subdivision of Pleasant Plains, in the District of Columbia, as shown on a plat or map filed with the said petition as part thereof, and praying, also, that a jury of five judicious, disinterested men, not related to any person interested in these proceedings and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States marshal for the District of Columbia to assess the damages each owner of land taken may sustain by reason of the widening and extension of the aforesaid alley and the condemnation of the land necessary for the purposes thereof, and to assess the benefits resulting therefrom, including the expenses of these proceedings, as provided in and by the aforesaid act of Congress. It is, by the court, this 12th day of April, A. D. 1906, ordered that all persons having any interest in these proceedings be, and they are hereby, warned and commanded to appear in this court on or before the 26th day of April, A. D. 1906, at 10 o'clock A. M., and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be empaneled and sworn herein; and it is further ordered, that a copy of this notice and order be published once in The Washington Law Reporter, and once in The Washington Evening Star, The Washington Post, and The Washington Times, newspapers published in the said District, before the said 26th day of April, A. D. 1906. It is further ordered, that a copy of this notice and order be served by the United States marshal for the said District, or his deputies, upon such of the owners of the fee of the land to be condemned herein as may be found by the said marshal or his deputies within the District of Columbia, before the said 26th day of April, A. D. 1906. By the court. JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 15-1t

[Seal]

**Campbell Carrington, Solicitor****In the Supreme Court of the District of Columbia.  
Blanche Belle Baldwin v. John T. Baldwin.**

No. 25,797. Equity Docket, No. 57.

The object of this suit is to obtain an absolute divorce upon the ground of adultery. Provided a copy of this order be published once each week for three successive weeks in The Washington Law Reporter and The Washington Post. On motion of the complainant, by her solicitor, Campbell Carrington, it is, this 16th day of March, A. D. 1906, ordered that the defendant, John T. Baldwin, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the

[Seal] Court: HARRY M. CLABAUGH, Chief Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 15-St

**Jas. B. Archer, Jr., and Jno. Lewis Smith, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Hudson C. Tanner, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 6th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 6th day of April, 1906. PRESTON B. RAY, Wash. Loan & Trust Bldg.; JNO. LEWIS SMITH, 458 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,588. Administration. [Seal.] 15-St



## Legal Notices.

## SECOND INSERTION.

R. H. McNeill, Attorney

In the Supreme Court of the District of Columbia.  
Charles H. Potter, Administrator of Fannie Potter,  
Plaintiff, v. Lyman F. Ellis, and District of Colum-  
bia, Defendant. At Law, No. 48,061.

The object of this suit is to recover damages against the defendants in the sum of \$10,000 for the wrongful death of plaintiff's intestate, Fannie Potter, and to enforce collection of same against the real and personal property of defendant within the District of Columbia. On motion of the complainant, it is this 23d day of March, A. D. 1906, ordered that the defendant, Lyman F. Ellis, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as

In the case of default. Done this 23d day of March, 1906. THOS. H. ANDERSON, Justice.  
True copy. J. R. Young, Clerk, by Alf. G. Buhrman, Asst. Clerk. 14-3t

R. H. McNeill, Attorney

In the Supreme Court of the District of Columbia.  
Fred Kemp, Plaintiff, v. Henry R. Groce, Doing  
Business as The Collateral Loan Co., Defendant.  
At Law, No. 48,067.

The object of this suit is to recover damages in the sum of \$10,000 for the wrongful and false arrest and imprisonment of the plaintiff by the defendant, Henry R. Groce, his agents and employees. On motion of the complainant, it is this 23d day of March, A. D. 1906, ordered that the defendant, Henry R. Groce, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and The Washington Times once a week for three suc-

[Seal] cessive weeks. By the Court: HARRY M. CLABAUGH, Chief Justice. True copy. Test: J. R. Young, Clerk, by Alf. G. Buhrman, Asst. Clerk. 14-3t

E. F. Colloday and G. L. Tait, Solicitors

In the Supreme Court of the District of Columbia.  
Charles C. Bassett v. Fanny Rice Bassett and E. Lawrence Hunt.

No. 26,110. Equity Docket No. 58.

The object of this suit is to obtain an absolute divorce on the ground of adultery. On motion of the complainant, it is, this 3d day of April, A. D. 1906, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and The Washington Times once a week for three suc-

[Seal] cessive weeks. By the Court: HARRY M. CLABAUGH, Chief Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 14-3t

W. Gwynn Gardiner, Solicitor

In the Supreme Court of the District of Columbia.  
Julia B. Smith v. Henry M. Smith, Annie Smith.

No. 26,014. Equity Docket No. —.

The object of this suit is to obtain a divorce a vinculo matrimonii on the grounds of the adultery on the part of the defendant, Henry M. Smith, with one person who lived with the defendant, Henry M. Smith, as his wife, and whose real name is unknown to complainant at this time, but who was known as Annie Smith. On motion of the complainant, it is, this 5th day of April, A. D. 1906, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and The Washington Times once a week for three successive weeks. By the Court: HARRY M. CLABAUGH, Chief Justice. True Copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 14-3t

[Seal] New corporations can procure from the Law Reporter Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated, numbered, and bound.

## Legal Notices.

C. Clinton James, Solicitor

In the Supreme Court of the District of Columbia.  
Samuel Rothert et al., Complainants, v. Harriet P. Gunnell et al., Defendants. Equity, No. 26,139. Docket 58.

The object of this suit is to establish the title of the complainants against the defendants by adverse possession to original lot eight (8) and the west thirty-six and one-half (38½) feet of original lot two (2), now being identical with lot 18 of Isabella Rothert et al.'s subdivision of said part of said lot two (2) as per plat in book 81, page 27, surveyor's office of the District of Columbia, in square seven hundred and ninety-two (792), Washington, District of Columbia. On motion of the complainants, it is, this 6th day of April, A. D. 1906, ordered that the defendants, Louisa H. McLaughlin, Elizabeth Miller, Hellen Karma, James H. Hill, William Brooke, Anna Brooke, Esther Brooke, Helen Brooke, Annie Brooke, John Van Ness Philip, Herman H. Philip, Gaston P. Philip, Elizabeth W. Philip, Madalina Van Ness, Christina D'Aubry, Louis J. D'Aubry, Edward Van Ness, Charles W. Van Ness, Margarita Van Ness, Anna Van Ness, Julia A. Van Ness, Anna W. Loney, Henry Loney, Meta Hutton, Nathaniel H. Hutton, Eugene Van Ness, Helen Van Ness, Julia I. Van Ness, Wm. P. Van Ness, Ann G. W. Van Ness, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs or devisees or alienees of such of the above-named defendants as are dead, and the unknown heirs or devisees or alienees of John P. Van Ness, Eugene Van Ness, Cornelius P. Van Ness, Matilda E. Van Ness, Washington I. Van Ness, Charles M. Van Ness, Richard Smith, John Bassett, George Andrews, and Josiah L. Deans, cause their appearance to be entered herein on or before the first rule day occurring three weeks after the first publication of this order, good cause therefor having been shown to the satisfaction of the court; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week in four successive weeks prior to said return day in The Washington Law Reporter and The Evening Star. By the Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 14-4t

Robert S. Hume, Attorney

In the Supreme Court of the District of Columbia,  
Holding a Bankruptcy Court.  
In the Matter of the Estate of John F. McCormick,  
Alleged Bankrupt. Bankruptcy, No. 436.

The object of these proceedings is to have John F. McCormick declared an involuntary bankrupt. On motion of the petitioning creditors, it is this 5th day of April, A. D. 1906, ordered that John F. McCormick cause his appearance to be entered herein on or before the tenth day occurring after the last day of the publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and The Washington Post once a week for two consecutive weeks. By [Seal] HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 14-2t

John A. Butler and C. W. Stetson, Solicitors  
In the Supreme Court of the District of Columbia.  
Margaret McDermott et al. v. The Unknown Heirs, Alienees, or Devisees of Thomas Turner, S. H. Platt, His Unknown Heirs, Alienees, or Devisees. Equity, No. 26,143.

The object of this suit is to perfect complainants' title to the south 20 feet front by full depth of original lot 15, square 584, in the city of Washington, District of Columbia. On motion of complainants, by their solicitors, John A. Butler and Charles W. Stetson, it is, this 5th day of April, 1906, ordered that the unknown heirs, devisees, or alienees of Thomas Turner, deceased, and S. H. Platt, or if he be dead, his unknown heirs, devisees, or alienees, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of forty days, exclusive of Sundays and legal holidays, from the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order shall be published in The Washington Law Reporter and The Washington Times once a week for four successive weeks, sufficient cause having been shown for dispensing with a longer period of publication. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 14-4t

**Legal Notices.**

**R. F. Downing, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Patrick H. Burke, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of April, 1906. MARY J. BURKE, 2323 H St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,563. Administration. [Seal.] 14-3t

**I. Williamson, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding the Probate Court.**  
**In the Matter of the Estate of Juno Stewart, Deceased.**  
**Administration, No. 13,321.**

Upon consideration of the report and petition filed herein by the executors of said Juno Stewart, it is by the court, this 3d day of April, A. D. 1906, ordered and decreed that the sale made by said executors to Joseph Mussante of the real estate described in said report, to wit, the west half of lot four (4) in square one hundred and forty (140), be and the same is hereby ratified and confirmed, unless cause to the contrary be shown in this court on or before the 4th day of May, A. D. 1906. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said day. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. 14-3t

**T. J. Mackey, Solicitor for Complainant**  
**In the Supreme Court of the District of Columbia.**  
**William J. King v. Susan E. King and Richard S. Ward.** No. 25,953. Equity Docket No. 57.

The object of this suit is to obtain a divorce from the defendant, Susan E. King, on the ground of adultery. Provided that a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Times. On motion of the complainant, it is, this 5th day of April, A. D. 1906, ordered that the defendants do severally cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in

wise the cause will be proceeded with as in [Seal] case of default. By the Court: HARRY M. CLABAUGH, Chief Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 14-3t

**A. E. Shoemaker, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Lemuel P. Burriss, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of April, 1906. ALBERTE SHOEMAKER, 4165th St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,494. Administration. [Seal.] 14-3t

**William D. Hoover, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Bridget Dehila Mullen, otherwise known as Della Mullen, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 29th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of March, 1906. THE NATIONAL SAFE DEPOSIT, SAVINGS AND TRUST COMPANY OF THE DISTRICT OF COLUMBIA, by George Howard, Treasurer. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,578. Administration. [Seal.] 14-3t

**Legal Notices.****THIRD INSERTION.**

**P. H. Marshall, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of James W. Reardon, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of March, 1906. FRED R. WALKER, 139 Todd Place N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,568. Administration. [Seal.] 13-3t

**Julius I. Peyser, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Hennie V. Prince, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 16th day of April, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies, or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 26th day of March, 1906. ABRAHAM D. PRINCE, by Julius I. Peyser, Attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,778. Administration. [Seal.] 13-3t

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Joseph Stump, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 16th day of April, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 28th day of March, 1906. CHAS. H. BAUMAN, Executor. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,647. Administration. [Seal.] 13-3t

**Richard A. Ford and J. J. Wilmarth, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**

**Charlotte M. Pace, Complainant, v. Albert E. Pace and Pearl Baker, Defendants.**  
**Equity. No. 26,063.**

The object of this suit is to obtain an absolute divorce upon the ground of adultery. On motion of the complainant, it is this 28th day of March, A. D. 1906, ordered that the defendants, Albert E. Pace and Pearl Baker, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post. By the Court. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 13-3t

The Law Reporter Printing Company's office is now the cleanest, most comfortable and best conducted one in the city of Washington, having a head for every department of the business. It will be kept so, in order that the public may be expeditiously served.

**Legal Notices.**

**John B. Lerner, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Washington Loan and Trust Company v. Charles W. Smiley, William H. W. Goodwin.**  
 No. 25,037. Equity Docket No. 58.

The object of this suit is to foreclose mortgage on lot numbered one hundred and thirty-seven (137) of Chapin Brown's subdivision of Mt. Pleasant, District of Columbia, and for the appointment of trustee to make sale thereof. On motion of the complainant, it is this 26th day of March, A. D. 1906, ordered that the defendant, Charles W. Smiley, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for

[Seal] three successive weeks in The Washington Law Reporter. By the Court: HARRY M. CLABAUGH, Chief Justice. True Copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 13-3t

**Wm. A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary Knox Linn, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 23d day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 27th day of March, 1906. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary; WILLIAMS S. KNOX. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,001. Adm. [Seal.] 13-3t

**Fred McKee, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of John A. Wineberger, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 23d day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of March, 1906. ANDREW H. RAGAN, 1223 11th st. N. W.; WILLIAM C. FLENNER, 1133 Euclid st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,524. Administration. [Seal.] 13-3t

**J. Arthur Lynham, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Louise Depoilly Follet, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of March, 1906. J. ARTHUR LYNHAM, Columbian Building. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,152. Administration. [Seal.] 13-3t

**Blair & Thom, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Augustine Heard, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of March, 1906. AUGUSTINE A. HEARD, 58 No. Pearl st., Albany, N. Y. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,364. Administration. [Seal.] 13-3t

**Legal Notices.**

**S. Herbert Glesy, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Louisa D. Lovett v. Hillard Owen.**  
 In Equity. No. 23,373. Docket 53.

ORDER NISI.

This cause came on to be heard at this term upon the report of S. Herbert Glesy and Corcoran Thom, the trustees herein appointed by decree to sell lot forty-three (43) in Brainerd H. Warner's subdivision of lots in "George Truesdell's addition to Washington Heights," as per plat of said Warner's subdivision recorded in Liber County No. 11, folio 95, of the records of the office of the surveyor of the District of Columbia; that they have sold the said lot and improvements thereon subject to a last deed of trust securing \$3,500, for twenty-four hundred and fifty dollars (\$2,450); and thereupon, upon consideration thereof, it is, this 24th day of March, 1906, ordered, adjudged, and decreed as follows: That the said sale be ratified and confirmed unless cause to the contrary be shown on or before the 28th day of April, 1906. Provided a copy of this order be published once a week for three successive weeks before the last [Seal] mentioned date in The Evening Star and The Washington Law Reporter. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clk. 13-3t

**FOURTH INSERTION.**

**P. H. Marshall, Solicitor**

**In the Supreme Court of the District of Columbia.**  
**Henry B. Hutchinson v. Israel Little et al.**  
 Equity No. 26,056.

The object of this suit is to establish the title of complainant, Henry B. Hutchinson, in fee simple, by the adverse possession of himself and those under whom he claims, to original lot numbered twenty-six (26), in square numbered nine hundred and fifty (950), in the city of Washington, District of Columbia. On motion of the complainant, by his solicitor, P. H. Marshall, it is, by the court, this 7th day of March, A. D. 1906, ordered that the defendants, Israel Little, if he be living, and the unknown heirs, devisees, and assignees of Israel Little, if he be dead, cause their appearance to be entered herein on or before the first rule day occurring three months after the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order to be published for three months, once a week for three successive weeks for the first month, and twice a month for each of the two succeeding months in The Washington Law Reporter and The Washington Times. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. mar. 9-16-23, apr. 13-20, may 11-18

**FIFTH INSERTION.**

**T. Percy Myers and Benjamin S. Minor, Solicitors**

**In the Supreme Court of the District of Columbia.**  
**Tillotson E. Brown, Complainant, v. The Unknown Heirs, Allenees, and Devisees of William B. Hurst, Deceased, Defendants.** In Equity, No. 25,954.

The object of this suit is to establish title by adverse possession of the complainant to part of lot numbered one (1) in square numbered three hundred and ninety-seven (397), to wit: Beginning at a point on Eighth street northwest, twenty-nine (29) feet and two (2) inches north of the southeast corner of lot numbered one (1) in square numbered three hundred and ninety-seven, and running thence north along said Eighth street thirteen (13) feet and eleven (11) inches, thence west ninety-nine (99) feet and four (4) inches, thence south thirteen (13) feet and eleven (11) inches, thence east ninety-nine (99) feet and four (4) inches, to the place of beginning. On motion of the complainant, by his solicitor, it is, by the court, this 8th day of February, A. D. 1906, ordered that the defendants, the unknown heirs, allenees, and devisees of William B. Hurst, deceased, cause their appearance to be entered herein on or before the first rule day occurring after three months from the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published for three months, once a week for three successive weeks for the first month, and twice a month for each of the two succeeding months, in The Washington Law Reporter and The Washington Post. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. feb 16, 23; mar 2; apr 6, 13, may 4, 11

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## Validity of Divorce Granted Where Defendant is Served by Publication.

The decision of the Supreme Court of the United States in *Haddock v. Haddock*, announced during the present week, has attracted attention throughout the country, because of its possible serious effect upon the status of many divorced persons. The case came up from the Supreme Court of New York, and the facts, briefly stated, were as follows: The parties were married in 1868 in New York, of which State both were at the time residents, but never lived together. It appeared that, immediately after the marriage, the husband had separated from the wife and, after drifting about the country for several years, settled in Connecticut in 1877; the wife continued all the while to reside in New York. In 1881 the husband, after several years' residence in Connecticut, brought suit against the wife in the courts of that State, charging desertion by her as well as that the marriage had been procured by fraud practiced by her. The only service made upon the wife was by publication, as provided by the statutes of Connecticut, and by mailing a copy of the petition to her at her last known place of residence in the State of New York; and there was no appearance to the suit by the wife. A divorce was granted in favor of the

defendant, and thereafter he married again and had several children by the second wife.

In 1899, thirty-one years after the marriage, the first wife brought suit in the courts of New York for a divorce from bed and board and for alimony, the petition alleging desertion by the husband and failure to provide for her support. The defendant, who was personally served with process, answered, and among other defenses, set up the decree of the Connecticut court dissolving the marriage. At the trial before the referee the record in the Connecticut suit was offered in evidence by the defendant, but was excluded on objection by the wife that the Connecticut court had not obtained jurisdiction over her person, the only service being by publication and she not having appeared in the proceeding. The referee, having excluded these proceedings, found that the defendant had without justifiable cause abandoned the wife and failed to provide for her, and that she was entitled to a separation from bed and board and to alimony.

This action of the referee was sustained by the Supreme Court of New York, and a judgment for separation and alimony was entered in favor of the wife, which judgment was affirmed by the Court of Appeals of New York. The case was then taken on writ of error to the Supreme Court of the United States.

The only Federal question presented was whether the court below violated the Constitution of the United States by refusing to give to the decree of divorce rendered by the Connecticut court the full faith and credit to which it was entitled? This question the Supreme Court, by a vote of five to four, decides in the negative. The opinion of the majority is by Mr. Justice White, and is an exhaustive discussion of the questions of law involved, with a review of the decisions bearing thereon. A section of the opinion of especial interest is that in which the case of *Atherton v. Atherton*, 181 U. S., 155, is distinguished. In that case, which was principally relied upon by the plaintiff in error as sustaining the contention that the domicile of one party alone is sufficient to confer jurisdiction to render a decree of divorce having extra-territorial operation, it was held that a decree of divorce may be lawfully obtained at the matrimonial domicile, notwithstanding the defendant may have taken up his or her separate residence in another State, providing the law with respect to personal service or publication is scrupulously observed. "The decision in that case," says the court, "was expressly placed upon the ground of matrimonial domicile. . . . Having disposed of the case upon the principle of matrimonia-

domicile, it can not, in reason, be conceived that the court intended to express an opinion upon the soundness of the theory of individual and separate domicile, which, isolatedly considered, was inadequate to dispose of, and was, therefore, irrelevant to, the question for decision."

Speaking generally, the effect of the decision is to deny to a decree of divorce, obtained under circumstances such as were present in the case before the court, conclusive effect under the "full faith and credit" clause of the Constitution. In other words, that, where a divorce is obtained in a jurisdiction other than the matrimonial domicile of the parties, and without personal service upon or appearance by the defendant, the decree of divorce, while it may be valid in the jurisdiction in which it is obtained, is not entitled to obligatory enforcement in another jurisdiction under that provision of the Constitution. The concluding paragraph of the opinion states the result of the decision, as follows:

"Without questioning the power of the State of Connecticut to enforce within its own borders the decree of divorce which is here in issue, and without intimating a doubt as to the power of the State of New York to give to a decree of that character rendered in Connecticut, within the borders of the State of New York and as to its own citizens, such efficacy as it may be entitled to in view of the public policy of that State, we hold that the decree of the court of Connecticut rendered under the circumstances stated was not entitled to obligatory enforcement in the State of New York by virtue of the full faith and credit clause. It therefore follows that the court below did not violate the full faith and credit clause of the Constitution in refusing to admit the Connecticut decree in evidence; and its judgment is, therefore, affirmed."

Mr. Justice Brown, with whom concurred Justices Harlan, Brewer, and Holmes, delivered a dissenting opinion, in which he strongly expressed their disagreement with the conclusions reached by the majority of the court, characterizing it as a step backward in American jurisprudence and a return to the old doctrine of comity, which it was the very object of the full faith and credit clause of the Constitution to supersede. Mr. Justice Holmes also expressed his dissent in a separate opinion.

That judicial power to compel a plaintiff to submit to a physical examination does not exist at common law is held in *May v. Northern P. R. Co.* (Mont.), 70 L. R. A., 111.

## Court of Appeals of the District of Columbia.

LEROY D. WALTER, EVAN H. TUCKER,  
AND WILLIAM J. FRIZZELL,  
APPELLANTS,

v.

HENRY B. F. MACFARLAND, HENRY L.  
WEST, AND JOHN BIDDLE, COMMISSIONERS OF THE DISTRICT  
OF COLUMBIA.

STREETS; DISTRICT COMMISSIONERS WITHOUT POWER TO NARROW ROADWAY.

1. The Commissioners of the District of Columbia are without power to narrow the roadway of established streets in the city of Washington, notwithstanding it may be for the public advantage to do so.
2. The exclusive control of the streets and the power to make regulations for keeping them in repair conferred on the Commissioners by sec. 77, R. S. D. C., does not necessarily imply the power to change their width at discretion after they have been established and improved and gone into general public use.

No. 1612. Decided March 7, 1906.

APPEAL by complainants from a decree of the Supreme Court of the District of Columbia, in Equity, No. 25,389, dismissing a bill in equity for an injunction. Reversed.

*Mr. Mason N. Richardson and Mr. Henry C. Stewart* for the appellants.

*Mr. E. H. Thomas and Mr. F. H. Stephens* for the appellees.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

The appellants have appealed from a decree dismissing a bill filed by them as resident taxpayers and owners of lots abutting on the streets hereafter mentioned against the Commissioners of the District, to enjoin them from executing an order by them made to narrow the roadway in certain streets of the city of Washington. It appears from the allegations of the bill, admitted by the answer, that in execution of their order aforesaid, the defendants are about to make a change in G street, between Fourth and Fourteenth streets northeast, which said street is now 90 feet wide between building lines, having parking 15½ feet wide, sidewalks 12 feet wide, and a roadway 35 feet wide. The proposed change will reduce the roadway to 30 feet by adding 2½ feet to the sidewalk on each side.

Similar changes are about to be made in Seventh and Eighth streets from Maryland avenue to Florida avenue northeast, which will reduce the present roadway of the former from 32 feet to 30 feet, and that of the latter from 40 feet to 39 feet.

The single question that has been raised is whether the defendants have the power conferred upon them by existing law to make such changes in the established public streets of the city of Washington.

The Commissioners, who have succeeded to the powers formerly conferred upon the Board of Public Works in respect of street control and improvement, rely upon section 77, R. S. D. C., for their authority to make the proposed changes in the said streets. That section reads

as follows: "The Board of Public Works shall have entire control of and make all regulations which they shall deem necessary for keeping in repair the streets, avenues, alleys, and sewers of the city, and all other works which may be intrusted to their charge by the legislative assembly or Congress."

Municipal governments exist and exercise authority through legislative sanction. For convenience of administration they are created as agents of government for certain local purposes, and have such powers only as are expressly conferred or may be fairly and reasonably implied as necessary to carry into effect such as have been expressly granted. *Barnett v. Denison*, 145 U. S., 135, 139. And while the laying out, opening, and improvement of streets in towns and cities are matters of peculiar fitness for municipal regulation and control, powers relating thereto must be similarly construed. *State v. Mayor, etc., Mobile*, 5 Port (Ala.), 279, 310; *St. Vincent Orphan Asylum v. Troy*, 78 N. Y., 108, 112; *Lockland v. N. M. R. R. Co.*, 31 Mo., 180, 185; *Atty.-Gen. ex rel Holtzman v. Helshon*, 18 N. J. Eq., 410; *Heiskell v. Mayor, etc., Baltimore*, 65 Md., 125, 151.

The municipal organization of the District of Columbia is of a peculiar character. There is no general organic law covering all of the ordinary powers usually conferred in the creation of municipal corporations throughout the several States of the Union—no formal municipal charter, so to speak.

The Commissioners, though vested from time to time with the power to make important regulations, are ministerial officers. There is no special municipal council or legislative body, as was the case under the preceding form of municipal government. Congress possesses and has retained the powers of a local legislature. Sometimes it enacts special laws relating to local affairs, and sometimes it delegates to the Commissioners extensive powers to make rules and regulations respecting specified subjects. The Commissioners have no authority to raise revenues for the support of the local government, and those raised by the direct authority of Congress are not turned over to them for appropriation and expenditure at discretion.

The title in fee to all streets and public reservations in the city of Washington is vested in the United States, and the public parks have been specially entrusted to the care and supervision of one of the departments of the general Government. Congress has specially provided, from time to time, for the improvement and extension of the old, established streets, as well as for the opening of new streets, and the changing and closing of others. While such works are provided to be done under the general supervision of the Commissioners, their discretion in all matters, including expenditures, is limited by the authorizing acts, and the special appropriations for the purpose. The Commissioners can not close streets; they can not authorize private encroachments, occupations, or obstructions; they are not permitted to authorize the construction of a street-car line in them.

In the light of these facts, and in conformity with the general rule of construction before stated, we are constrained to hold that the Com-

missioners have not the power to narrow the roadway of the streets in question, notwithstanding it may be to the public advantage. The question is not one of expediency, but of power. The exclusive control of the streets, and the power to make regulations for keeping them in repair, conferred by section 77 aforesaid, does not, in our opinion, necessarily imply the power to change their width at discretion after they have been established and improved, and have gone into general public use. If the power to narrow the width of the roadway at all, in a single street, can be implied from the general grant of power to control and repair, then it may be exercised to any extent, in the discretion of the Commissioners, short of closing it completely. And if a single street or park thereof can be so narrowed, then all of the streets and avenues of the city may be subjected to the same process at discretion.

The power contended for is great, and far-reaching in its consequences; its exercise is of the greatest importance not only to all owners of abutting property, but to the general public also; and we can not believe that Congress contemplated its extension through the general grant of the power to control and repair.

Section 225, R. S. D. C., has been relied on by the appellants, in support of their contention, as expressly limiting the power of the Commissioners to reduce the width of a roadway in a street to less than 35 feet. This section authorized the District authorities "to set apart from time to time, as parks, to be adorned with shade trees, walks, and inclosed with curb-stones, not exceeding one-half the width of any and all avenues and streets in the said city of Washington, except Pennsylvania, Louisiana, and Indiana avenues, and Four-and-a-half street between the City Hall and Pennsylvania avenue, leaving a roadway of not less than 35 feet in width in the center of said avenues and streets, or two such roadways on each side of the park in the center of the same; but such inclosures shall not be used for private purposes."

If section 77 were conceded to extend the power contended for on behalf of the appellees, then section 225, considered in connection with it, would probably have the effect to limit the narrowing of roadways in all streets to 35 feet. But this would apply to but two of the streets in question, because the reduction in the third does not bring it within that limit. Believing, however, that section 77 does not confer the power to narrow the streets or roadways at all, section 225 must be regarded as conferring an independent power not elsewhere provided for. Moreover, while section 225 appears later in the order pursued in the revision of the District statutes, it was enacted by Congress nearly a year before that embraced in section 77. For the reasons before given we regard the meaning of section 225 as of no practical importance in this case, though it seems to indicate the general intention of Congress that all roadways in streets shall be at least 35 feet wide.

It follows that the decree dismissing the bill must be reversed, with costs, and the cause remanded with direction to grant the injunction prayed for. Reversed.

On March 22, 1906, a motion for a rehearing was made on behalf of the appellees.

On April 3, 1906, the motion for rehearing was denied. Opinion per curiam.

The disastrous results of our decision in this case upon schemes for the improvement of streets, which the representatives of the District of Columbia seem to apprehend, have caused us to make a careful reexamination of the decision in the light of the printed argument submitted with the motion for rehearing.

No specific instances of the narrowing of streets during the thirty-five years that section 77, R. S. D. C., has been in force have been called to our attention, so as to present the question of the effect of a further construction of that section through frequent and continuous operation of the power on the one hand and acquiescence on the other. If, in occasional instances, the power may have been exercised without challenge, we regard the meaning of the section as too plain for the adoption of such a construction.

No additional legislation has been called to our attention that tends to increase or enlarge the power given by the section heretofore passed upon, nor has any decision been cited which conflicts in any respect with the doctrine heretofore enounced. Decisions of the Supreme Court of the United States and of this court, referring to the section, have relation to questions arising in respect of grading streets, encroachments thereon and upon parking, and upon the liability of the District of Columbia for neglect of duty in keeping streets in repair. Not one involved the power herein claimed to widen or narrow a street. In deciding that the section relied on did not confer such power, nothing was said or intended to be intimated as regards the powers of the Commissioners, in the reasonable exercise of their discretion, to improve or repair the streets by reducing or raising their grade. Where grading is necessary in order to improve and further a convenient use of the streets, it may be included in the power to repair, but as to that we express no opinion, for the question is not even incidentally involved. Certainly there is nothing in the case as decided that goes to the denial of such power. All that we intended to hold, and that we think is carefully stated in the opinion, is that the Commissioners have no express or implied power to narrow an established street. If such power is desirable, application for its extension will have to be made to Congress. The motion is denied.

A statement by one attempting to sell a cash register, that its use would save the expense of a bookkeeper and one-half of the clerk's time, is held, in *National Cash Register Co. v. Townsend* (N. O.), 70 L. R. A., 349, to be merely dealer's talk, and, although false, not ground for rescission of the contract.

The right of a police officer to take life to prevent the escape of one whom he is attempting to arrest for misdemeanor is denied in *State v. Smith* (Iowa), 70 L. R. A., 246.

## Court of Appeals of the District of Columbia.

FREDERICK S. YOUNG ET AL., APPELLANTS,

v.

THE NORRIS PETERS COMPANY.

EJECTMENT; PROOF OF WILL BY SUBSCRIBING WITNESSES; EVIDENCE; WILLS; CONSTRUCTION OF DEVISE; RESIDUARY CLAUSE.

1. The provision of section 8 of the act of Congress of June 8, 1898, reenacted as section 141 of the Code, providing that any person interested under a will filed in the office of the register of wills prior to the date of said act, "may offer the same for probate as a will of real estate," etc., is permissive and not mandatory.
2. In an action of ejectment, where one of the parties claims under a will which went into effect prior to the date of said act, proof of the due execution of such will may be made by the subscribing witnesses thereto, and upon such proof the will is properly admitted in evidence.
3. Where in such action proof of due execution of the will is made by the subscribing witnesses, and no attempt is made to contradict or impair the credibility of the evidence, the admission in evidence of the probate of said will as a will of personalty, even if error, is not prejudicial to the party claiming against the will.
4. As a general rule, a residuary clause will always be construed so as to prevent intestacy as regards any part of testator's estate, unless there is an apparent intention to the contrary.
5. The word property, when there is no indication of its use in a restricted sense, has generally been held to include real property.
6. Testator, by his will which went into effect prior to June 8, 1898, devised to his brother J certain real estate in this District, and by the residuary clause of the will declared, "I give, will, bequeath, and devise to my said brother J all the personal property of which I may die seized and possessed as well also of any other property or properties not otherwise willed and devised as hereinbefore set forth." Held, that if the fee simple title was not vested in J by the first devise to him, it became so vested by virtue of the residuary clause.

No. 1579. Decided March 6, 1906.

APPEAL by plaintiffs from a judgment of the Supreme Court of the District of Columbia, at Law, No. 43,560, entered upon a verdict for defendant directed by the court in an action of ejectment. Affirmed.

*Mr. R. Golden Donaldson* and *Mr. John Ridout* for the appellants.

*Mr. R. Ross Perry*, *Mr. Ralph P. Barnard*, and *Mr. Guy H. Johnson* for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This is an action of ejectment brought by Thomas E. Young, on December 21, 1899, against the Norris Peters Company to recover an undivided third part of lot No. 34 in reservation B in the city of Washington. While the action was depending, Thomas E. Young died, and Frederick S., Carrie M., and Charles O. Young have been substituted as plaintiffs in his stead.

Two stipulations entered into by the respective counsel recited the following facts substantially: (1) James E. Young died October 19, 1892, seized in fee of the locus in quo as described in the declaration, leaving as his only heirs at law his brothers, Thomas E. Young, William A. Young, John M. Young, and his sister, Margaret L. Gaddis. (2) That the plaintiffs will



offer no evidence attacking in any way the testamentary capacity of James E. Young or of John M. Young on the dates of the alleged execution of their wills, October 1, 1892, and June 29, 1894, respectively, the first of which was admitted to probate in the Supreme Court of the District November 15, 1895, and the second on the same day. (3) That the defendant shall only be required to make formal proof of said execution by such subscribing witnesses to said wills as are living within the District of Columbia at the time of trial. (4) That no evidence shall be offered by the plaintiffs attacking the said wills by reason of any undue influence, fraud, or other similar matter mentioned in any caveat heretofore filed. (5) That the gross annual rents from the locus in quo are \$1,200 per annum, and have been such since the filing of the declaration in this cause. (6) That the substituted plaintiffs are the children and sole heirs at law of Thomas E. Young, the original plaintiff. The stipulation contains a proviso to the effect that nothing therein shall prevent the plaintiffs from objecting to any proof of said wills on the ground that the only competent proof of execution is a probate of the same as wills of real estate after June 8, 1898.

It was then admitted that the defendant was, at the time of the institution of the suit, and still is, the tenant of Job Barnard, surviving trustee under the will of John M. Young, and in possession of the premises, the net rental value of which is \$75 per month; and, further, that James E. Young died October 19, 1892, and John M. Young, February 5, 1895.

Having then given evidence tending to show that the value of the locus in quo is \$17,000, the plaintiffs rested.

The defendant then offered evidence tending to show title as follows:

(1) The deaths of James T. Young, one of the three subscribing witnesses to the will of James E. Young, and Reuben F. Baker, one of the three subscribing witnesses to the will of John M. Young.

(2) Proof of the due execution of the will of James E. Young by the two living subscribing witnesses thereto.

(3) The will of James E. Young, as follows: "I, James E. Young, being of sound mind and memory, but weak of body, do make and declare this to be my last will and testament.

"I give, will, bequeath and devise to my sister, Margaret L. Gaddis, in her own right, that certain piece or parcel of land, known and designated as number fifteen hundred and seven (1507), Ninth (9th) street, northwest, in the city of Washington, District of Columbia, together with all the improvements upon said land.

"I give, will, bequeath and devise to my brother William A. Young, the farm now owned by me, and which I have occupied as my residence, situate on the Columbia road, in Alexandria county, State of Virginia, said farm being the more easterly one of the two farms now owned by me in said county and State.

"I give, will and bequeath and devise to my brother John M. Young, that certain piece or parcel of land known and designated as number four hundred and fifty-six (456) Pennsyl-

vania avenue, northwest, in the city of Washington, District of Columbia, together with all the improvements thereon or appertaining to said piece or parcel of land.

"I give, will, bequeath and devise to my said brother John M. Young the most westerly farm of the two farms owned by me and situate on the Columbia road in Alexandria county, State of Virginia.

"I give, will, bequeath and devise to my said brother John M. Young all of the personal property of which I may die seized and possessed as well also of any other property or properties not otherwise willed and devised as hereinbefore set forth.

"I nominate and appoint my said brother John M. Young as executor of this my last will and testament.

"In testimony whereof, I have hereunto set my hand and seal, and publish and decree this to be my last will and testament in presence of the witnesses below, this first day of October, in the year of our Lord, one thousand eight hundred and ninety-two.

his  
JAMES E. YOUNG. [L. S.]  
mark.

"Signed, sealed, declared and published by the above named testator, James E. Young, as and for his last will and testament in the presence of us, who, at his request and in his presence and in the presence of each of us, have hereto signed our names as witnesses.

"EDWARD H. WILSON,

"423 2nd N. E.

"GEORGE F. HANE,

"JAMES T. YOUNG,

"1336 N. Y. Ave."

(4) The probate of said will as one of personal property in the Supreme Court of the District on November 15, 1895.

(5) Proof by the two living subscribing witnesses to the will of John M. Young of its due execution.

(6) This will is not set out in the bill of exceptions, but it is recited that the residue of testator's estate, including the locus in quo, was devised thereby to trustees, of whom Job Barnard is the sole survivor, upon certain trusts.

(7) The probate of said will as a will of personalty in the Supreme Court of the District on November 15, 1895.

The plaintiffs objected to the testimony of the subscribing witnesses to each of the foregoing wills, to their introduction in evidence upon such proof, and also to the introduction of the records of probate, all of which objections were overruled, with exceptions reserved.

The court then refused several instructions asked by the plaintiffs submitting the grounds of their claim of title, and directed the jury to return a verdict for the defendant. Plaintiffs reserved their exceptions to this action of the court, and from the judgment entered on the verdict have prosecuted this appeal.

1. The first question to be considered arises on the exceptions taken to the introduction of the wills of James E. Young and John M. Young, respectively, after proof of their execution as wills affecting real estate.

Before the passage of the act of Congress of

June 8, 1898, the probate of a will in the District of Columbia was evidence of its validity only so far as it affected personal property. As showing the passage of title to real estate the instrument itself must have been produced, with the proof of subscribing witnesses, as was done in this instance.

Section 2 of the act aforesaid (30 Stat., 434), conferred plenary jurisdiction upon the Supreme Court of the District of Columbia, holding a special term therefor, to hear and determine all questions relating to the execution and to the validity of any and all wills devising any real estate within the District, and of any and all wills and testaments properly presented for probate therein, and to admit the same to probate and record in said special term; and provided that neither the execution nor the validity of any such will or testament so admitted to probate and record shall be impeached or examined collaterally, but the same shall be in all respects and as to all persons *res judicata*, subject nevertheless to the provisions hereinafter contained. See also sec. 117, Code D. C.

Section 8 declares that the preceding sections shall apply only to wills and testaments hereafter offered for probate, etc., provided that "any person interested in the probate of any such will (i. e., one before made) may offer the same for probate as a will of real estate whereupon such proceedings shall be had as by this act are authorized in regard to wills hereafter offered for probate."

Section 141 of the Code, reenacting the foregoing section, expressly declares that the preceding sections of the Code relating to probate shall not apply to wills and testaments offered for probate prior to June 8, 1898, etc., "Provided, that any person interested under any will filed in the office of the register of wills for the District of Columbia prior to said date may offer the same for probate as a will of real estate, whereupon such proceedings shall be had as by this Code are authorized in regard to wills offered for probate after said date."

The contention of the appellants is that, under the sections aforesaid of the act of 1898, and of the Code, which went into effect January 1, 1902, no will of a testator dying before June 8, 1898, can be admitted to show title to land in an action of ejectment unless it shall have been admitted to probate as provided therein.

We need not pause to consider whether Congress had the power to impose the condition contended for upon wills that went into effect before the enactment, or whether, if so, parties claiming thereunder had such substantial rights in them as were expressly saved by section 1638 of the Code, because we are of the opinion that it did not undertake to exercise such power. The provision of section 8, substantially reenacted in section 141 of the Code, that parties interested under such a will filed prior to said date in the office of the register of wills, "may offer the same for probate as a will of real estate," is clearly intended as permissive and not mandatory.

There was no error, therefore, in permitting each will to be introduced in evidence after proper proof of its execution in due form.

2. The error assigned on exceptions taken to

the introduction of the probate of the said wills as wills of personal property, on November 15, 1895, raises a question of no practical importance.

If inadmissible, no possible injury was sustained by the appellants. The execution of each will was amply proved, under the terms of the stipulation relating thereto, and no attempt was made to contradict or impair the credibility or weight of the evidence. Nor do appellants deny that, if admissible in evidence under the proof given, they were sufficient, without additional proof, to pass title, whatever it may be, to the devisees.

3. The will of James E. Young having been properly admitted in evidence upon the proof of its due execution, the question of title to the land in controversy, as between the contending parties, depended upon its construction.

If, as contended by the appellants, the devise therein to John M. Young passed to him an estate for life only, the direction of a verdict for the defendant was erroneous. On the other hand, if he took an estate in fee the court was right in directing the verdict.

The contention of the appellants is based upon the law in force in the District of Columbia at the time when this will went into effect, under which it has been a settled rule that a simple devise, without any words of limitation or description of the extent of the interest devised, created an estate for life only. At the same time any words sufficiently indicating an intent on the part of the testator to create the greater estate will be given that effect, no matter what their form may be, and the whole will may be looked into to ascertain this intention in respect of the particular clause. *McAleer v. Schneider*, 2 App. D. C., 461, 467; 22 Wash. Law Rep., 193.

Under our view of the effect of what we regard as a residuary devise in this will, it is unnecessary to search its language throughout for the purpose of ascertaining and determining whether the testator intended to vest an estate in fee in John M. Young by the terms of the preceding specific devise.

By the terms of this residuary clause the testator gives, wills, bequeaths, and devises to his brother, John M. Young, all of the personal property of which he died "seized and possessed, as well also as any other property or properties not otherwise willed and devised as hereinbefore set forth."

If the fee did not pass by the preceding devise, it was clearly not otherwise willed or devised, and hence vested in John M. Young by virtue of this residuary clause. Courts, as a general rule, will always construe a residuary clause so as to prevent intestacy as regards any part of the testator's estate, unless there is an apparent intention to the contrary. *Reld v. Walback*, 75 Md., 205, 217; *Dulany v. Middleton*, 72 Md., 67, 76; *Barnum v. Barnum*, 42 Md., 251, 311. See, also, as to the general effect of a residuary devise upon reversions, etc., *Hayden v. Stoughton*, 5 Pick., 528, 539; *Davis v. Callahan*, 78 Me., 313, 318; 1 *Jarman on Wills* (6 Ed. Bigelow), pp. 637, et seq.; *Schouler on Wills*, sec. 524.

The residuary clause expressly relates not only to property of which the testator was possessed, but also that of which he was seized,

and he uses the word "devise" as well as "bequeath."

Moreover, the word property, where there is no indication of its use in a restricted sense, has generally been held to include real property. *McAleer v. Schneider*, 2 App. D. C., 461, 469: 22 Wash. Law Rep., 193; *Hamilton v. Rathbone*, 175 U. S., 414, 421; *Jackson v. Housel*, 17 Johns. 281, 283; *Morris v. Henderson*, 37 Miss., 492, 505; *McKean v. Bishop*, 9 Calif., 137, 142; *Reid v. Walback*, 75 Md., 205, 217.

For the reasons given, we think that the court was right in directing a verdict for the defendant, and the judgment will therefore be affirmed, with costs.

**Affirmed.**

**Bankruptcy—Preference—Transfer for Performance of Legal Services—Negotiations With Creditors.**—A transfer of property by an insolvent debtor, immediately prior to and in contemplation of bankruptcy proceedings, to an attorney, in consideration of the attorney agreeing to perform legal services in negotiating with the creditors of such debtor for a settlement of his financial difficulties without resort to the bankruptcy court, is not validated by section 60d of the Bankruptcy Act, and the property so transferred may be recovered by the trustee of the bankrupt estate. In *re Habegger*, 15 Am. B. R., 198.

**Bankruptcy—Corporations—Collection of Unpaid Subscriptions to Stock.**—An agreement, expressed or implied, between a corporation and a subscriber to its original capital stock, that only a certain per cent of the par value shall be paid, and that no more shall be called for or paid, is in fraud of creditors and may be set aside upon the application of the trustee in bankruptcy of the corporation, and so far as necessary to pay creditors the amount unpaid upon each share of the stock so issued may be collected. In *re Remington Automobile & Motor Co.*, 15 Am. B. R., 214.

**Same—Issue of Stock Paid for in Property Purchased.**—The bankrupt corporation made a contract to permanently locate in a particular city whose board of trade agreed to take a certain amount of the corporation's stock at less than its par value and to furnish a free site for a building for the corporation. The stock issued to the board of trade was sold to subscribers at the price paid thereof, who purchased upon the strength of statements in a certain circular sent out by the Chamber of Commerce, which also paid for and turned over a site to the corporation, as agreed and accepted. The statute under which the corporation was organized provided that it might issue full-paid stock in payment and for property necessary in its business, and that in the absence of actual fraud in the transaction, the judgment of the directors as to the value of the property purchased should be conclusive. Held, that said stock was paid for in full, in cash or property, and there being no fraud in the transaction, the stock, whether in the hands of the board of trade or its subscribers, was not liable to further assessment. In *re Remington Automobile & Motor Co.*, 15 Am. B. R., 214.

## Supreme Court of the District of Columbia.

### COLUMBIA NATIONAL SAND DREDGING COMPANY, OWNER, AND FRANK V. KINTZ, MASTER, STEAM TOW-BOAT "EUGENIA," LIBELLANTS,

v.

### THE STEAMBOAT "CHARLES MACALESTER," ETC.

#### ADMIRALTY; LIBEL; SALVAGE SERVICES.

1. To entitle a libellant to salvage there must be a contract, express or implied; and a contract would be implied where there was benefit received and risk incurred, provided the assistance was rendered a vessel derelict at the time, or to one in imminent danger at the request of the officers or crew having it in charge.
2. Where a ship is manned and in control of her own officers no merely volunteer aid will give a right to salvage.
3. Nor can salvage be rightfully claimed where no assistance was needed; and the salvor must have contributed in some degree at least to save the property from destruction or from danger of destruction. A mere speculative danger will not entitle a person to salvage.
4. In a proceeding in admiralty to recover for alleged salvage services rendered by a towboat, the "Eugenia," to the steamboat "Macalester," it appeared that at the time of the rendition of the alleged services (which consisted merely of throwing a line to the "Macalester" by means of which she was towed a short distance out into the river), the "Macalester" was in charge of her own officers, and fully able to provide for her own safety; that no request was made by her officers for assistance from the towboat, which made no effort to ascertain whether assistance was needed before throwing the line. Held, that the claim of libellant for salvage services was unfounded, and the libel dismissed.

In Admiralty. District Court, No. 601.

Decided March 26, 1906.

HEARING on a libel in Admiralty, District Court, No. 601, to recover for alleged salvage services. Libel dismissed.

*Messrs. McCammon and Hayden* for libellants.

*Messrs. Birney and Woodard* for the claimant.

Mr. Justice BARNARD delivered the opinion of the Court:

A libel is filed in this case by the Columbia National Sand Dredging Company, the owner, and Frank V. Kintz, the master, operating one of its small tow-boats known as the "Eugenia," against the steamer "Macalester," alleging, in substance, that about 9.30 p. m. on May 13, 1903, the said tow-boat "Eugenia" was in the port of Washington proceeding to her wharf, when she discovered that the steamboat "Columbia," lying at her pier at the foot of Seventh street, was on fire; that the fire had progressed so far that it was then impossible to save the said burning boat; that the "Eugenia," on discovering this fact, proceeded to the "Macalester," then lying at her wharf, distant about 75 feet from the said "Columbia;" that the said "Macalester" was not then under steam, or had not a sufficient head of steam to enable her to leave her said wharf and escape from proximity to said fire; that the "Eugenia," at the request of a person then on board of the said "Macalester," passed a line to her, and towed her out into the stream about 100 yards from the said fire, and thereupon the said per-

son in charge of said "Macalester," declared that she was safe, and that the services of the "Eugenia" were no longer needed. That but for the assistance so rendered, the said "Macalester" would have taken fire and been lost, inasmuch as there was no other tow-boat or steam vessel under steam then in the vicinity, and not sufficient time for her to get up steam to enable her to move; that the libellants, by reason of the perils necessarily incurred, and the great importance of the service rendered, deserve to have, and therefore claim, a commensurate reward for salvage therefor; wherefore they pray for process against the said steamer "Macalester," her tackle, etc., and for a decree for such a sum or proportion of the value of said "Macalester" to be due to the libellants as a compensation for the said salvage services as shall seem to the court meet, together with expenses, etc., and for general relief.

On the filing of this libel, process was issued by which the marshal attached the "Macalester," her boilers, etc., and notice was ordered to be given for persons interested to appear and show cause why the said boat and appurtenances should not be condemned and sold, etc.

Thereupon the owner, the Mount Vernon & Marshall Hall Steamboat Company, appeared and filed an answer, in which it denies the facts alleged in the 3d, 4th, 5th, 6th, and 7th articles of the said libel, except as to the jurisdiction of this court; and alleges the facts to be that on May 13, 1903, about 9 o'clock p. m. the steamer "Columbia" was on fire; that about 9.15 o'clock p. m. of said evening the "Macalester," then lying at her slip at the foot of M street, did, under her own steam, and without the assistance of the said "Eugenia," proceed to move out from her slip to the middle of the river, and one A. Posey, being in command, finding the said "Eugenia" lying at the stern of said "Macalester," then ordered said tug to move out of her way so that the "Macalester" could be backed out into the stream; and thereupon the said tug passed around the stern of the "Macalester" and rested in proximity to the steamer "Newport News," lying northwest of the "Macalester's" dock.

To this answer the libellants filed a replication, and thereupon proof was taken at great length by both parties, on which the case has been submitted for adjudication.

The libel does not state any definite amount claimed, but, in argument, counsel have stated that \$5,000 would represent about one-eighth of the value of the "Macalester" at a fair estimate, and that at least that sum should be awarded as salvage.

The testimony in many respects is very conflicting. The libellants, however, claim that they have established the fact that the "Macalester" was in imminent danger of being burned; that she had no steam, or not sufficient steam, to enable her to escape from the vicinity of the burning "Columbia" in time to avoid destruction or damage, and that she was, in fact, towed out into the stream by the "Eugenia," and that no other tugboats were under steam in that vicinity at the time that could have rendered such assistance.

The counsel for the owner of the "Macalester" claim, with equal confidence, that the testimony establishes the fact that the "Macalester" moved out into the stream by her own power, without any help from the "Eugenia"; that there was no imminent danger at the time to the "Macalester"; that there were other tugboats under steam in the immediate vicinity that could have rendered assistance to the "Macalester" had she required it, and that no one authorized to represent the "Macalester," in any sense, had requested the "Eugenia" to lend a helping hand.

After a careful consideration of all the testimony, the court is of the opinion, and finds as matter of fact, that the "Eugenia" did go to the stern of the "Macalester," and threw her a line, which was taken by one John D. Weeks, then voluntarily on her deck, and by means of which some help was given her in moving out from her dock into the river; but the court also finds that at that time the "Macalester" had on board, and was actually in charge of, some of her own men and officers, with a river captain in command; and that none of these gave any request or invitation to the master or crew of the "Eugenia" to assist the "Macalester" in any way; and the court also finds as matter of fact that at the time the "Macalester" was not in any imminent or immediate danger of conflagration from the burning ferry-boat, the "Columbia"; and that she had sufficient steam of her own, by which she could and did turn her wheels, and by which she could have moved out from her dock into the river without any help from the "Eugenia."

This being true, the libellant's claim to salvage can not be allowed under the well-established principles of the maritime law.

While the court recognizes that the maritime law does apply to a situation such as is disclosed by the evidence in this cause, still the court can not shut its eyes to the fact that there is no reason for this application which would in any great degree distinguish the situation from that of a peril by fire upon land. The fire on the "Columbia" occurred while the boat was at the wharf; the "Eugenia," engaged in her regular occupation of towing sand scows, was making her regular trip to port when she discovered the fire, and passing by the burning boat, and at the suggestion of some one standing on the "Columbia's" wharf, she steamed up to the stern of the "Macalester," in no danger herself of injury by fire or storm, and threw a line to the "Macalester" and undertook to tow her into the river. The time occupied could not have exceeded ten minutes at most; and even if the "Macalester" had been in imminent danger, and those rightfully in charge of her had asked for this assistance, there is no equitable or moral right for the owners of the "Eugenia" to claim any considerable or exorbitant salvage for such service.

The "Eugenia" was a boat in her home port, as well as the "Macalester"; and both of them owned by private corporations, and both presumably known to each other, and capable of responding to any reasonable claim that either had against the other, if such claim had been presented in the ordinary way that claims are presented by one person against another.

Instead, however, of presenting the claim to the owner of the "Macalester," who was presumably well known to the owners of the "Eugenia," the libellants appealed to the Court of Admiralty, by filing the libel in this case, without previous demand or notice of claim, and by attaching the steamer, and thereafter taking proof at great length and expense, compelling the owner of the "Macalester" to do likewise, in order to meet the case made by the testimony in favor of the libellants. It seems only fair for litigants to keep down costs and damages in any controversy, when the same can be done without danger of loss to the party beginning the litigation, and if a reasonable claim in this case had been presented, a suit might have been avoided; or, if not, a suit at law might have been brought by which a judicial settlement could have been had at very little cost to either party.

In order to entitle a libellant to salvage, there must be, it is said, a contract, either express or implied; and a contract in such a case would be implied, where there was benefit received and risk incurred, provided the assistance was rendered to a vessel which was a derelict at the time, or to a vessel in imminent danger, at the request of the officers or crew having it in charge.

Where the ship is manned, and in control of her own officers, no merely volunteer aid will give a right to salvage. There should be at least an implied assent or request from those on board. Neither can salvage be rightfully claimed in any case where no assistance was needed; and the salvor must have contributed, in some degree at least, to save the property from destruction, or from danger of destruction.

Chief Justice Marshall, in the case of the "Amelia," 1 Cranch, 1, says, "that a mere speculative danger will not be sufficient to entitle a person to salvage, is unquestionably true." While it is not necessary that the danger must be inevitable, still, to maintain this right, the danger must be real and imminent.

I am fully satisfied from the testimony in this case that if the "Eugenia" had not come near the "Macalester," the latter boat would have taken care of herself, even if a fire had been started on her decks by sparks from the burning "Columbia" before she moved out, for she had men aboard, and a donkey engine, and a hose with fire buckets, and was able to care for herself by wetting down the decks, which she did before she left her slip.

I find further, as matter of fact, from the evidence in this case, that the master of the "Eugenia" made no effort to ascertain whether or not the "Macalaster" was manned, or whether or not she needed assistance, before throwing the line to her; and that she sent no one on board the "Macalaster" to release her lines from the wharf or to take charge of her wheel while she should be towed out of her slip; but that the master of the "Eugenia" went to the "Macalester" at the suggestion of said John D. Weeks, made while he was on shore or on the wharf of the "Columbia," and that he had no duty to perform for and was not connected with the "Macalester" in any way at the time; further, that when the "Eugenia" reached the

"Macalester" the latter had sufficient steam to propel her through the water; that her fires had been banked about 8.30 o'clock that same evening, after she had landed at her wharf; and that when banked there was about forty pounds of steam indicated. That the "Macalester" was 150 feet distant from the northern or nearest end of the burning "Columbia"; and that there was a shed some 16 feet high, with a body of water between the two vessels; and that the officers in charge of the "Macalester" requested no assistance from the "Eugenia"; and that Captain Posey, who was on the hurricane deck and in command, was ignorant of the presence of the "Eugenia" when she threw the line that was taken by said Weeks on the main deck and made fast on the port cleat of the "Macalester"; and that when he did discover that the "Eugenia" was endeavoring to tow the "Macalester," and she was just out of her berth, he gave orders to her to get out of the way, as he was going to back out into the stream; and that when Captain Posey gave such orders, said Weeks cast off the "Eugenia's" line which he had previously made fast. The court further finds that the "Eugenia" was built of wood in 1874; 39.1 feet long, 11.6 feet wide, 5.8 feet in depth, was of five tons burden, net, and worth at the time \$2,750, but was subsequently sold for \$1,300.

The testimony discloses that there were at least three other tugboats under steam and in the vicinity of the "Macalester" at the time the "Eugenia" approached her, namely, the "Sarah," the "Dallas," and the "Carter."

If the persons in charge of the "Macalester" at the time had anticipated that she was in peril, and had requested the "Eugenia" to tow her out in the stream, and she had done so, all the "Eugenia" could have claimed under the circumstances of this case, where she was in no peril herself, and no unusual expense, and where there was no gallantry, courage, or heroism required to render such assistance, would be double compensation on the basis of towage, as stated in the case of the "Heaper," 122 U. S., 256; and that would be exceedingly small, probably not more than five or ten dollars. So small, in fact, as to make the efforts put forth by the libellants in this suit to acquire a substantial interest in the "Macalester" as compensation for such slight service and risk appear absolutely unwarranted and their claim unconscionable.

But for the reasons already given, however, I am constrained to hold that no salvage whatever in this case has been earned, and I will therefore sign a decree dismissing the libel, with costs.

Failure to equip a train with tools usually carried by trains for emergency use in case of a wreck, for want of which a passenger is not rescued as promptly as would otherwise have been practicable from his position in the debris of a wreck, is held, in *Jackson v. Natchez & W. R. Co. (La.)*, 70 L. R. A., 294, to render the carrier liable in damages for such additional suffering, regardless of whether the wreck itself was or was not caused by its negligence.

## Recent Bankruptcy Decisions.

**Bankruptcy—Involuntary Proceedings—Recovery of Concealed Property by Trustee—Creditors Assisted in Litigation—No Allowance to their Attorneys.**—Where, in an involuntary bankruptcy proceeding, instituted prior to February 5, 1903, a trustee represented by able counsel prosecutes with vigor to a successful conclusion a litigation to compel the bankrupt to disclose, uncover, and disgorge property to the amount of \$6,000, which he had knowingly and fraudulently concealed, while a bankrupt, from his trustee, and for disobedience of an order to turn over the amount in cash or surrender the property, the bankrupt was not only adjudged in contempt, but indicted for the offense, and he purges the contempt by turning over to the trustee the sum of \$3,400, attorneys employed by creditors who generously came to the aid of the trustee because of the general desire and determination to vindicate the law, may not be compensated for their services out of the bankrupt estate. *In re Felson*, 15 Am. B. R., 185.

**Bankruptcy—Taxes—Duty of Trustee.**—Under section 64a, the trustee must pay all taxes "legally due and owing by the bankrupt" although the greater part of the property upon which a municipal tax was assessed consisted of real and personal property covered by a mortgage in excess of the value of the property, which by consent of the court, the trustee had relinquished to the mortgagees. *City of Chattanooga v. Hill*, 15 Am. B. R., 185.

**Bankruptcy—Assets—Concealment—Order to Turn Over to Trustee.**—Where on motion to compel a bankrupt to turn over assets alleged to have been wrongfully concealed from the trustee, the testimony of the bankrupt's wife, regarding the loss of a large amount of money, is, in the opinion of the court, manufactured and unworthy of belief, it will be disregarded and the bankrupt ordered to turn over the full amount. *Matter of Frankfort*, 15 Am. B. R., 210.

**Bankruptcy—Set-off—Tenant's Unliquidated Damages for Tort—Landlord's Claim for Rent.**—A claim for unliquidated damages against the landlord for negligently allowing water to come in upon the premises leased to the bankrupt and injure his property is not available as an offset against the landlord's claim for rent. *In re Becher Bros.*, 15 Am. B. R., 228.

**Bankruptcy—Ancillary Jurisdiction.**—A District Court within whose jurisdiction there is property of a debtor against whom involuntary proceedings have been instituted, and a receiver appointed in another district, has jurisdiction to appoint an ancillary receiver to aid in protecting the assets pending the selection of a trustee. *In re Benedict*, 15 Am. B. R., 232.

**Bankruptcy—Effect of Bankrupt's Death on Life Insurance.**—Upon the death of a bankrupt after adjudication, his right under the proviso to section 70a (5) in a policy of life insurance, which never passed to his trustee, because the company never stated to him the cash surrender value thereof, passes to his legal representatives, subject to the payment of such cash surrender value; and the expiration of thirty days

after such value has been ascertained and stated to the company without a tender thereof does not affect such right. *Van Kirk v. Vermont Slate Co.*, 15 Am. B. R., 239.

**Bankruptcy—Life Insurance Policies Pledged as Collateral.**—Anterior to the four months' period, three policies of life insurance, one having a cash surrender value, were pledged by the bankrupt as collateral security for notes upon which he was an indorser; and after adjudication the pledgee, upon receiving a part payment of his debt, assigned them to another creditor and put in a claim against the estate for the balance, but before anything was done concerning the policies the bankrupt died and their proceeds exceeded in amount the claims of the original pledgee. Held:

That the right of the trustee to redeem the policies upon payment of the notes held by the original pledgee and interest thereon, together with sums he had paid as premiums, though not cut off by the assignment to the other creditor, was subject to the right of the administrator of the bankrupt to retain the policy having a cash surrender value on payment of or securing the same to the trustee.

That each of the policies should bear its burden of the debt of the pledgee.

That the amount apportioned to the policy having a cash surrender value should be made up of the trustee's pro rata share in such value, and the interest therein of the administrators of the bankrupt.

That the amount required to redeem the policies should be distributed between the pledgee and his assignee.

That the claim filed for the balance of the pledgee's debt should be expunged. *Van Kirk v. Vermont Slate Co.*, 15 Am. B. R., 239.

**Bankruptcy—Debts—Priority—Claim for Rent—Surrender of Premises.**—Where all rent due at the time of the filing of a tenant's petition in bankruptcy, and the landlord is allowed compensation at the rental value for the receiver's use and occupation, whose attempt of a surrender of the premises is not accepted, a claim for priority for a year's rent under a clause in the lease, that in case of the filing of a petition in bankruptcy by or against the tenant, the entire rent reserved for the term should immediately become due and payable, and that the landlord might proceed as in case of any breach of covenant under the lease, is properly rejected. *In re Winfield Mfg. Co.*, 15 Am. B. R., 257.

**Bankruptcy—Preference—Submission of Question as to, Alleged—Effect on Claim—Fixing Time of Surrender.**—A creditor does not lose the right to prove his claim by submitting to the judgment of the court the question of the validity of alleged preferential payments; and the referee, upon finding that the payments were in fact voidable preferences, because made within the four months' period, should fix a reasonable time within which the creditor may make surrender and have his claim allowed. *In re Oppenheimer*, 15 Am. B. R., 267.

**Bankruptcy—Exemptions—"Tool of Trade"—Guide's Canoe—Rifle not Exempt.**—In Maine, the canoe of a registered guide for hunters and

fishermen is exempt as a "tool necessary for his trade or occupation," but not his rifle. *Matter of Mullen*, 15 Am. B. R., 275.

**Bankruptcy — Discharge — Specifications of Objection—What Should Allege.**—Specifications of objections to a discharge should distinctly allege the particular grounds relied upon to defeat the discharge, so that all parties may be advised as to the issue to be tried, and should also allege facts showing that the objecting creditor will be affected by the discharge, and is therefore interested in defeating the same. *In re Servis*, 15 Am. B. R., 271.

#### Ultra Vires—Power of National Banks.

*In First Nat. Bank of Ottawa v. Converse*, decided by the Supreme Court of the United States in February, 1906 (26 Sup. Ct. R., 306), it was held that it is ultra vires of a national bank to take stock in a corporation organized to embark in the purely speculative business of buying and selling the stocks and assets of an existing and insolvent corporation, with power, but without the obligation, to engage, as an independent enterprise, in a manufacturing business, although the bank takes such stock in exchange for a claim against the insolvent corporation.

It was further held that want of authority of a national bank to subscribe for capital stock in a speculative enterprise is a valid defense to an action against it to enforce its statutory liability as a stockholder.

#### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

### Legal Notices.

#### FIRST INSERTION.

##### Hamilton & Colbert, Attorneys

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Francis H. Hill, Deceased.  
No. 13,455. Administration Docket 84.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by George E. Hamilton, the executor named in said will, it is ordered this 6th day of April, A. D. 1906, that Mary Hester Sterrett, Eleanor Blunt, Mary H. Bryan, Henrietta Willson, Nannie Willson, Emma Sutton, Alice Willson, Nannie Hamilton, Elizabeth Camp, George Wallace, James B. Willson, Francis Willson, Hayward Willson, Frederick Willson, Martha Neale Willson, Mrs. Horace Willson, Carroll W. Willson, Neale W. Willson, and the unknown heirs at law of Francis H. Hill, deceased, and all others concerned, appear in said court on Tuesday, the 22d day of May, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: M. J. Griffith, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 16-3t

[Seal] STAFFORD, Justice. Attest: M. J. Griffith, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 16-3t

### Legal Notices.

[Filed March 30, 1906. J. R. Young, Clerk.]

Gordon & Gordon, Attorneys

In the Supreme Court of the District of Columbia.  
William Wheatley et al. vs. Marion W. McCullough et al. Equity, No. 22,275. Doc. 60.

The trustees herein having reported an offer from the Columbia National Sand Dredging Company to purchase parts of square eleven hundred and seventy-three (1173) in the city of Washington, District of Columbia, fronting about one hundred and twenty-eight feet eight inches (128 ft. 8 in.) on the south side of Water (K) street northwest, and running back to the channel of the Potomac River, for the sum of fifty thousand (\$50,000) dollars, all cash or one-third cash, balance in one, two, and three years, in equal instalments, with five per cent interest, payable semi-annually, subject to the payment of a brokerage commission of one thousand (\$1,000) dollars; it is, this 30th day of March, A. D. 1906, ordered that said offer be accepted and sale made thereunder be ratified and confirmed, unless cause to the contrary be shown on or before the 30th day of April, 1906. Provided a copy of this order be published in The Washington Law Reporter once each of three successive weeks before said last named day. HARRY M. CLABAUGH, Chief Justice. A true copy.

[Seal] Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 16-3t

Wm. A. McKenney, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of John H. Elliott, Deceased.  
No. 13,438. Administration Docket —

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by the American Security and Trust Company, the executor in said will named, it is ordered this 16th day of April, A. D. 1906, that Middleton S. Elliott, Charles P. Elliott and Rosa Elliott, and all others concerned, appear in said court on Tuesday, the 22d day of May, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in the Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day.

[Seal] WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 16-3t

W. Mosby Williams, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice. That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Frances L. Robinson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of April, 1906. THOMAS P. WOODWARD, 610 13th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,582. Administration. [Seal.] 16-3t

William B. Reilly, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Robert L. Beatty, Deceased.  
No. 13,600. Administration Docket —

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration cum testamento annexo on said estate, by Richard Murphy, it is ordered this 18th day of April, A. D. 1906, that notice is hereby given to Tracy Beatty, a brother, and the unknown heirs of Charles Beatty, deceased, the heirs at law and next of kin of Robert L. Beatty, deceased, and all others concerned, appear in said court on Tuesday, the 22d day of May, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Post, once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 16-3t

[Seal] STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 16-3t



**Legal Notices.**

**Hamilton & Colbert, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of David Murphy, Deceased.**  
**No. 13,571. Administration Docket 35.**

Application having been made herein for probate of the last will and testament and a codicil thereto of said deceased, and for letters testamentary on said estate, by Michael J. Colbert and James F. Shea, named as executors in said last will and testament, it is ordered, this 18th day of April, A. D. 1906, that John Murphy, Mary McPartland, Ellen Murphy, John Murphy, Jr., James Murphy, John Murphy, son of Patrick, Mary Ann Roach, and all others concerned, appear in said court on Friday, the 1st day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] (Signed) WENDELL P. STAFFORD, Justice.  
 Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 16-3t

**Hamilton & Colbert, Attorneys**

**In the Supreme Court of the District of Columbia.**  
**The Baltimore and Ohio Railroad Company v. Richard E. Simmes, the Unknown Heirs, Alienees, and Devisees of Richard E. Simmes. Equity. No. 26,049.**

The object of this suit is to declare the title of the complainant to the real estate situate in the city of Washington, District of Columbia, known as all of original lot numbered fourteen (14) in square numbered six hundred and eighty-one (681), except so much of said lot as was conveyed to the Baltimore and Ohio Railroad Company by Nicholas Acker and wife, by deed dated September 12, 1873, and recorded September 20, 1873, in liber 728, folio 463, of the land records of the District of Columbia, to be good in fee simple, by reason of adverse possession, and to declare the title of complainant to be good in it of record, and to perpetually enjoin the defendants from asserting any title to said real estate. On motion of the complainant, by its solicitors, Hamilton & Colbert, it is, by the court, this 18th day of April, A. D. 1906, ordered that the defendants, Richard E. Simmes, and the unknown heirs, alienees, and devisees of said Richard E. Simmes, cause their appearance to be entered herein on or before the first rule day occurring after the fortieth day, exclusive of Sundays and legal holidays, after the date of the first publication of this order; otherwise this cause will be proceeded with as in case of default. The court is satisfied, upon good cause shown, as appears by the affidavit filed herein, that it is not necessary that this order should be published at least twice a month during the period of not less than three months. This order shall be published at least once a week for four successive weeks before said return day; provided that said order shall be published twice a month in the month of April, 1906, and twice a month in the month of May, 1906. This order shall be published in The Washington Law Reporter, the court not deeming it necessary that the same should be published in any other paper, and no other paper having been selected by the parties. WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 16-4t

**Hamilton & Colbert, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Henry Kraak, Deceased.**  
**No. 13,590. Administration Docket —.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Union Trust Company of the District of Columbia and Henry C. Kraak, the executors named in said will, it is ordered this 17th day of April, A. D. 1906, that Wilhelmina Howard and Florence Marie Irving, and all others concerned, appear in said court on Tuesday, the 22d day of May, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said

[Seal] return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 16-3t

**Legal Notices.**

**E. S. Mussey, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Mary Emily Bates Cones, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 12th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 18th day of April, 1906. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary; ELLEN S. MUSSEY, 418 Fifth St. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,514. Administration. [Seal.] 16-3t

**Wm. A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary M. B. Whitman, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of April, 1906. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,554. Administration. [Seal.] 16-3t

**J. J. Hamilton and Lawrence Hufty, Solicitors**

**In the Supreme Court of the District of Columbia.**  
**John J. Hamilton and Lawrence Hufty, Collectors,**  
**etc., vs. John C. Regan et al. No. 26,073. Equity**  
**Docket No. —.**

The object of this suit is to obtain a decree for the possession of a sum of money now held by the Treasurer of the United States as Commissioner of the Sinking Fund of the District of Columbia, amounting to about \$3,674.75, and being a portion of the retain due J. C. Regan & Co., under contract No. 2754, which was entered into by said Regan & Co. with the District of Columbia for the construction of the Brightwood reservoir. Provided a copy of this order be published once a week for three successive weeks before said return day in The Washington Law Reporter and The Washington Post. On motion of the complainants, it is this 17th day of April, A. D. 1906, ordered that the defendants, John C. Regan and Dominic E. Regan, trading as J. C. Regan & Co., cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the court:

[Seal] WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 16-3t

**Wm. A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Lawrence P. Graham, Deceased.**  
**No. 13,538. Administration Docket —.**

Application having been made herein for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by the American Security and Trust Company, the executor named in said will, it is ordered this 16th day of April, A. D. 1906, that Thomas Peyton Gwynne, Worth Odgen Gwynne, Frederick Key Gwynne, Lizzie Peyton Robinson, Campbell Lawson, Thomas Lawson, William Lawson, Jennie G. George, Lawrence P. Graham, James Duncan Graham, — White, Bessie White Watson, and all others concerned, appear in said court on Tuesday, the 22d day of May, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day.

[Seal] WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 16-3t

**Legal Notices.****Alexander H. Bell, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Daniel McNamara, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of April, 1906. MARY C. McNAMARA, 582 8th St. S. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,548. Admn. [Seal.] 16-St

**Lester & Price, Attorneys****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscribers, of the State of Maryland and the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Mary Schwakoff, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 18th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 18th day of April, 1906. CHARLES B. MEYD, Frederick and Athol aves., Balto., Md.; GEORGE SCHWAKOFF, 811 11th St. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,602. Administration. [Seal.] 16-St

**Wm. A. McKenney, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Samuel P. Langley, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of April A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of April, 1906. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,550. Administration. [Seal.] 16-St

**Thos. Walker, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Nellie Tyler, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of April, 1906. WILLIAM D. JARVIS, 120 D St. S. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,109. Administration. [Seal.] 16-St

**M. F. Mangan, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Julius E. Juennemann, late of the State of Maryland, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of April, 1906. JOHANNE W. JUENEMANN, Ardwick, Md. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,499. Administration. [Seal.] 16-St

**Legal Notices.****SECOND INSERTION.****Carlisle & Johnson, Attorneys****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Margaret McAllister, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand, this 3d day of April, 1906. BRIDGET McALLISTER MCCORMICK, 700 B St. S. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,551. Administration. [Seal.] 15-St

**J. J. Darlington, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Claas Denekas, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 4th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 4th day of April, 1906. ERNEST A. SEELHAUSEN, 610 G St. N. W.; GUSTAV H. SCHULZE, 1751 L St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,406. Adm. [Seal.] 15-St

**Edward S. Bailey, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of George Thomas Clark, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of April, 1906. E. ELMO CLARK, Pacific Bldg. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,587. Administration. [Seal.] 15-St

**S. E. Thomas, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John E. Burns, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of April, 1906. MICHAEL T. BURNS, 328 Md. ave. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,587. Administration. [Seal.] 15-St

**Howard B. Hodge, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of William H. Ryne, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of April, 1906. RICHARD C. RYNEX, Takoma Park, Md. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,594. Administration. [Seal.] 15-St

**Legal Notices.****Douglas & Douglas, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of David H. Fenton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 9th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of April, 1906. KATHARINE JORDAN FENTON, 1415 Chapin st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,592. Administration [Seal.] 15-St

**Lambert & Baker, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Edward Shea, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of April, 1906. HELEN F. SHEA, 325 Maryland ave. S. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,544. Administration. [Seal.] 15-St

**John E. Taylor & E. B. Sherrill, Solicitors****In the Supreme Court of the District of Columbia.**

Mary A. Knopp, Complainant, v. Elizabeth A. Durkin et al., Defendants. Equity, No. 25,900.

John E. Taylor and Edgar B. Sherrill, trustees, having reported to the court the sale of the real estate described in the bill of complaint and answers in the above entitled cause, to wit, all that certain piece or parcel of land and premises situate and being in the City of Washington, in the District of Columbia, known and distinguished as and being part of lot numbered 188, in square 108, in what is known as Beatty and Hawkins' addition to Georgetown, now part of Washington, D. C., bounded as follows: beginning at a point on 33d street at the end of 40 feet measured north from the intersection of 38d and Q streets, and running thence on said 33d street north 28 feet 8 inches; thence west to the rear line of said lot; thence south 13 feet 4 inches; thence southeast and east in accordance with the original record line of said part of said lot to the point of beginning (said premises being known as No. 1604 33d street N. W.), to Mary A. Knopp for the sum of three thousand three hundred and seventy dollars (\$3,370 00), it is by the court this 7th day of April, 1906, adjudged, ordered, and decreed that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 8th day of May, 1906; provided a copy of this order be published once a week for three successive weeks before said last

[Seal] mentioned date in The Washington Law Reporter. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 15-St

**E. L. Gies, Attorney**

In the Supreme Court of the District of Columbia.  
Minnie Adelaide Goodman, Complainant, v. Robert D. Goodman and Cornelia D. LeGourd, Defendants. Equity, No. 26,108.

The object of this suit is to obtain a divorce "a vinculo matrimonii" from the defendant, Robert D. Goodman. On motion of the complainant, it is this 10th day of April, A. D. 1906, ordered, that the defendants, Robert D. Goodman and Cornelia D. LeGourd, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order to be published in The

[Seal] Washington Law Reporter and The Washington Times, once a week for three successive weeks. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 15-St

**Legal Notices.****H. G. Kimball, Solicitor****In the Supreme Court of the District of Columbia.**

Francis I. Willis, Complainant, v. Etta Brent Helskell et al., Defendants. Equity, No. 26,098.

The object of this suit is to establish or record the title in fee simple of the complainant to lot numbered eighty-three (83) in Henry L. Mann's subdivision of part of original lot twelve (12) in square five hundred and fifty-four, in the city of Washington, District of Columbia. On motion of the complainant, by his solicitor, it is, this 9th day of April, A. D. 1906, ordered that the defendants, Etta Brent Helskell, the unknown heirs, alienees, and devisees of Nottley Young, deceased, and the unknown heirs, alienees, and devisees of Samuel Burch, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order to be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star, good cause for shortening the period of publication having been [Seal] shown. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 15-St

**C. H. Stanley, Attorney**

8 E. Lexington St., Baltimore, Md., Care of Fillmore Bell.  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**Estate of Cornelia Mossell, Deceased.**

No. 13,575. Administration Docket.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Charles W. Mossell, it is ordered this 12th day of April, A. D. 1906, that Richard Morris, Rev. B. F. Lee, Alphonso Tucker, and all others concerned, appear in said court on Wednesday, the 16th day of May, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 15-St

**Leon Tobriner, Attorney**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Pius Stang, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 30th day of April, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies, or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 10th day of April, 1906. CARL HAMMEL, by Leon Tobriner, Attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,732. Administration. [Seal.] 15-St

**Millan & Smith, Attorneys**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the State of Pennsylvania and the District of Columbia, respectively, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Frederick A. Stier, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 6th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 8th day of April, 1906. FERNANDO H. STIER, Pa. Bldg., Phila., Pa.; WILLIAM W. MILLAN, Columbian Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,580. Administration. [Seal.] 15-St

**Legal Notices.****Campbell Carrington, Solicitor**

**In the Supreme Court of the District of Columbia.**  
**Bianche Belle Baldwin v. John T. Baldwin.**  
 No. 25,797. Equity Docket, No. 57.

The object of this suit is to obtain an absolute divorce upon the ground of adultery. Provided a copy of this order be published once each week for three successive weeks in The Washington Law Reporter and The Washington Post. On motion of the complainant, by her solicitor, Campbell Carrington, it is, this 16th day of March, A. D. 1906, ordered that the defendant, John T. Baldwin, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the

[Seal] Court: HARRY M. CLABAUGH, Chief Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 15-8t

**Jas. B. Archer, Jr., and Jno. Lewis Smith, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Hudson C. Tanner, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 6th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 6th day of April, 1906. PRESTON B. RAY, Wash. Loan & Trust Bldg.; JNO. LEWIS SMITH, 458 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,588. Administration. [Seal.] 15-8t

**THIRD INSERTION.****C. Clinton James, Solicitor**

**In the Supreme Court of the District of Columbia.**  
**Samuel Rothert et al., Complainants, v. Harriet P. Gunnell et al., Defendants.** Equity, No. 26,139. Docket 58.

The object of this suit is to establish the title of the complainants against the defendants by adverse possession to original lot eight (8) and the west thirty-six and one-half (36½) feet of original lot two (2), now being identical with lot 18 of Isabella Rothert et al.'s subdivision of said part of said lot two (2) as per plat in book 31, page 27, surveyor's office of the District of Columbia, in square seven hundred and ninety-two (792), Washington, District of Columbia. On motion of the complainants, it is, this 6th day of April, A. D. 1906, ordered that the defendants, Louisa H. McLaughlin, Elizabeth Miller, Helen Karas, James H. Hill, William Brooke, Anna Brooke, Esther Brooke, Helen Brooke, Annie Brooke, John Van Ness Phillip, Herman H. Phillip, Gaston P. Phillip, Elizabeth W. Phillip, Madalina Van Ness, Christina D'Aubry, Louis J. D'Aubry, Edward Van Ness, Charles W. Van Ness, Margarita Van Ness, Anna Van Ness, Julia A. Van Ness, Anna W. Loney, Henry Loney, Meta Hutton, Nathaniel H. Hutton, Eugene Van Ness, Helen Van Ness, Julia I. Van Ness, Wm. P. Van Ness, Ann G. W. Van Ness, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs or devisees or alienees of such of the above-named defendants as are dead, and the unknown heirs or devisees or alienees of John P. Van Ness, Eugene Van Ness, Cornelius P. Van Ness, Matilda E. Van Ness, Washington I. Van Ness, Charles M. Van Ness, Richard Smith, John Bassett, George Andrews, and Josiah L. Deans, cause their appearance to be entered herein on or before the first rule day occurring three weeks after the first publication of this order, good cause therefor having been shown to the satisfaction of the court; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week in four successive weeks prior to said return day in The Washington Law Reporter and The Evening Star. By the Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 14-4t

Justice blanks of every description for sale at this office.

**Legal Notices.****E. F. Colloday and G. L. Tait, Solicitors**

**In the Supreme Court of the District of Columbia.**  
**Charles C. Bassett v. Fanny Rice Bassett and E. Lawrence Hunt.**  
 No. 26,110. Equity Docket No. 58.

The object of this suit is to obtain an absolute divorce on the ground of adultery. On motion of the complainant, it is, this 3d day of April, A. D. 1906, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and The Washington Times once a week for three successive weeks. By the Court: HARRY M. CLABAUGH, Chief Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 14-8t

**W. Gwynn Gardiner, Solicitor**

**In the Supreme Court of the District of Columbia.**  
**Julia B. Smith v. Henry M. Smith, Annie Smith.**  
 No. 26,014. Equity Docket No. —.

The object of this suit is to obtain a divorce a vinculo matrimonii on the grounds of the adultery on the part of the defendant, Henry M. Smith, with one person who lived with the defendant, Henry M. Smith, as his wife, and whose real name is unknown to complainant at this time, but who was known as Annie Smith. On motion of the complainant, it is, this 5th day of April, A. D. 1906, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and The Washington Times once a week for three successive weeks. By the Court: HARRY M. CLABAUGH, Chief Justice. True Copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 14-8t

**R. H. McNeill, Attorney**

**In the Supreme Court of the District of Columbia.**  
**Charles H. Potter, Administrator of Fannie Potter, Plaintiff, v. Lyman F. Ellis, and District of Columbia, Defendant.** At Law, No. 48,061.

The object of this suit is to recover damages against the defendants in the sum of \$10,000 for the wrongful death of plaintiff's intestate, Fannie Potter, and to enforce collection of same against the real and personal property of defendant within the District of Columbia. On motion of the complainant, it is this 23d day of March, A. D. 1906, ordered that the defendant, Lyman F. Ellis, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in the case of default. Done this 23d day of March, 1906. THOS. H. ANDERSON, Justice. True copy. J. R. Young, Clerk, by Alf. G. Buhrman, Asst. Clerk. 14-8t

**John A. Butler and C. W. Stetson, Solicitors**

**In the Supreme Court of the District of Columbia.**  
**Margaret McDermott et al. v. The Unknown Heirs, Alienees, or Devisees of Thomas Turner, S. H. Platt, His Unknown Heirs, Alienees, or Devisees.** Equity, No. 26,143.

The object of this suit is to perfect complainants' title to the south 20 feet front by full depth of original lot 15, square 534, in the city of Washington, District of Columbia. On motion of complainants, by their solicitors, John A. Butler and Charles W. Stetson, it is, this 5th day of April, 1906, ordered that the unknown heirs, devisees, or alienees of Thomas Turner, deceased, and S. H. Platt, or if he be dead, his unknown heirs, devisees, or alienees, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of forty days, exclusive of Sundays and legal holidays, from the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order shall be published in The Washington Law Reporter and The Washington Times once a week for four successive weeks, sufficient cause having been shown for dispensing with a longer

[Seal] period of publication. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 14-4t

**Legal Notices.**

**T. J. Mackey, Solicitor for Complainant**  
**In the Supreme Court of the District of Columbia.**  
**William J. King v. Susan E. King and Richard S.**  
**Ward. No. 25,958. Equity Docket No. 57.**

The object of this suit is to obtain a divorce from the defendant, Susan E. King, on the ground of adultery. Provided that a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Times. On motion of the complainant, it is, this 5th day of April, A. D. 1906, ordered that the defendants do severally cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in

[Seal] case of default. By the Court: HARRY M. CLABAUGH, Chief Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 14-3t

**A. E. Shoemaker, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Lemuel F. Burriss, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of April, 1906. ALBERT E. SHOEMAKER, 416 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,494. Administration. [Seal.] 14-3t

**R. F. Downing, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Patrick H. Burke, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of April, 1906. MARY J. BURKE, 2323 H St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,568. Administration. [Seal.] 14-3t

**I. Williamson, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding the Probate Court.**  
**In the Matter of the Estate of Juno Stewart, Deceased.**  
**Administration, No. 13,321.**

Upon consideration of the report and petition filed herein by the executors of said Juno Stewart, it is by the court, this 3d day of April, A. D. 1906, ordered and decreed that the sale made by said executors to Joseph Mussante of the real estate described in said report, to wit, the west half of lot four (4) in square one hundred and forty (140), be and the same is hereby ratified and confirmed, unless cause to the contrary be shown in this court on or before the 4th day of May, A. D. 1906. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said day. WENDELL F. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. 14-3t

**R. H. McNeill, Attorney**  
**In the Supreme Court of the District of Columbia.**  
**Fred Kemp, Plaintiff, v. Henry R. Groce, Doing**  
**Business as The Collateral Loan Co., Defendant.**  
**At Law, No. 45,067.**

The object of this suit is to recover damages in the sum of \$10,000 for the wrongful and false arrest and imprisonment of the plaintiff by the defendant, Henry R. Groce, his agents and employees. On motion of the complainant, it is this 23d day of March, A. D. 1906, ordered that the defendant, Henry R. Groce, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise

[Seal] wise the cause will be proceeded with as in the case of default. Done this 23d day of March, 1906. THOS. H. ANDERSON, Justice. True copy. J. R. Young, Clerk, by Alf. G. Buhrman, Asst. Clerk. 14-3t

**Legal Notices.**

**William D. Hoover, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Bridget Dehila Mullen, otherwise known as Della Mullen, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 29th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of March, 1906. THE NATIONAL SAFE DEPOSIT, SAVINGS AND TRUST COMPANY OF THE DISTRICT OF COLUMBIA, by George Howard, Treasurer. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,575. Administration. [Seal.] 14-3t

**FIFTH INSERTION.**

**Leon Tobriner and Byron U. Graham, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Isador Neuburger, Trustee, v. Charles W. Dant et al.**  
**No. 26,338. Equity.**

The object of this suit is to perfect complainant's title to part of lot lettered "G" in Benjamin Pollard's subdivision of part of square numbered five hundred and seventy (570) as per plat recorded in liber N. K., folio 177, of the records of the office of the surveyor of the District of Columbia, described as follows: Beginning for the same on "D" street at the southwest corner of said lot, and running thence east on said street seventeen (17) feet six (6) inches; thence north one hundred and twenty (120) feet to a public alley fifteen (15) feet wide; thence west on said alley seventeen (17) feet six (6) inches to the northwest corner of said lot; and thence south one hundred and twenty (120) feet to the place of beginning. On motion of the complainant, by his solicitors, Leon Tobriner and Byron U. Graham, it is this seventh (7) day of March, A. D. 1906, ordered that the defendants, Annie Middleton, Edith LePreux, Fannie Mullen, George Dant, Allan Dant, Victor Dant, Frances P. Hurley, George J. Hurley, and William B. Hurley, cause their appearance to be entered herein on or before the fortieth (40th) day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs, alienees, and devisees of Richard T. Queen, cause their appearance to be entered herein on or before the first rule day occurring three months after the publication of this order; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks prior to said first return day and twice a month for three successive months prior to said latter return day (the last publication to include one of the former publications) in The Washington Law Reporter and The Washington Times. By the court: HARRY M. CLABAUGH, Chief Justice. A true copy.

[Seal] Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. mar. 9-16-25-30: apr 20-27; may 13-25-1906

**P. H. Marshall, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Henry B. Hutchinson v. Israel Little et al.**  
**Equity No. 26,056.**

The object of this suit is to establish the title of complainant, Henry B. Hutchinson, in fee simple, by the adverse possession of himself and those under whom he claims, to original lot numbered twenty-six (26), in square numbered nine hundred and fifty (950), in the city of Washington, District of Columbia. On motion of the complainant, by his solicitor, P. H. Marshall, it is, by the court, this 7th day of March, A. D. 1906, ordered that the defendants, Israel Little, if he be living, and the unknown heirs, devisees, and alienees of Israel Little, if he be dead, cause their appearance to be entered herein on or before the first rule day occurring three months after the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order to be published for three months, once a week for three successive weeks for the first month, and twice a month for each of the two succeeding months in The Washington Law Reporter and The Washington Times. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. mar. 9-16-23, apr. 13-20, may 11-18

[Seal] Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. mar. 9-16-23, apr. 13-20, may 11-18

# The Washington Law Reporter

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WASHINGTON, D. C. - - - - - APRIL 27, 1906

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### Carriers—Duty to Receive Blind Passengers.

The decision of the Court of Appeals of Kentucky in the recent case of Illinois Central Railroad Co. v. Allen, 89 S. W., 150, is one of much interest to carriers of passengers. It was held that where a blind man, 77 years of age, frequently took short trips involving no change of cars, or on taking a trip requiring a change of cars was assisted by chance acquaintances or the employees in charge of the trains, the carrier was justified in refusing to sell him a ticket unless he secured an attendant.

### Right of Bankrupt to Life Insurance Policy.

A section of the Bankruptcy Act which has given rise to somewhat divergent views in different Federal courts is treated of in *Van Kirk v. Vermont Slate Co.*, 140 Fed., 98. Sec. 70a of that act, giving to a bankrupt the right to retain a life insurance policy having a cash surrender value, by paying such value to the trustee, is there construed as not affected by the death of the bankrupt after adjudication. This section is also held to refer only to policies which by their express provisions give the bankrupt the right to receive a fixed or ascertainable sum therefor, so that policies giving no such contract right pass to the trustee as assets of the estate.

### Accident Insurance—Blood Poisoning.

In the case of *Central Accident Insurance Company v. Rembe et al.*, recently decided by the Supreme Court of Illinois, it was held that insurance covering the death of the insured caused by external violence or accidental means extended to a case of death from blood poisoning inoculated by an accidental external injury to the person of the insured without which the poisoning would not have ensued. A clause in an accident policy issued to a physician and surgeon extending the insurance to "septic wounds caused by accident while performing any operation pertaining to the business of the insured, the poison matter being injected into the wound at the time of the accident," was construed not to be limited to surgical operations, but as including accidental wounds received when administering, or preparing to administer, treatment pertaining to the business of the insured.

### Validity of Contract Contingent Upon Action by Congress.

The Supreme Court of the United States has affirmed the decree of the Court of Appeals of this District in the case of *Hazelton v. Miller*, 33 Wash. Law Rep., 217. The case involved an option on certain land purchased by the Government as a site for a hall of records in this city. It was alleged by complainant that the defendant had given him an option to purchase the land for \$9,000, the option running until the close of the then term of Congress. Subsequently defendant sold the property to the Government for \$14,395, and complainant brought suit for specific performance of the contract, alleging that he was entitled to the advance over the price agreed to be paid by him because of his services in securing favorable consideration by Congress of the site. The trial court dismissed the bill of complaint, and its decree was affirmed by the Court of Appeals, and that in turn by the Supreme Court of the United States. Mr. Justice Holmes delivered the opinion of the court, which holds the proceedings contrary to public policy, and that a contract for a contingent fee in the sale of supplies to the Government of the United States can not be enforced. "There is no real difference in principle," says the court, "between agreements to procure favors from legislative bodies and agreements to procure favors in the shape of contracts from the heads of departments." Justice Holmes remarks, in the course of the opinion, that it was not necessary to inquire whether anything improper was done, for "in its inception the offer intended, necessarily invited, and tended to induce improper solicitations, and it intensified the inducement by the contingency of the reward."



## Court of Appeals of the District of Columbia.

NONIE L. SULLIVAN, ADMINISTRATRIX,  
APPELLANT,

v.

VIRGINIA C. HUIDEKOPER.

NEGLIGENCE; DANGEROUS PREMISES; TRESPASSERS.

1. The primary duty to guard and protect a child against patent and unconcealed dangers devolves upon the parent and not upon a stranger; and there is no duty resting upon an owner of real estate on which is a pond or other body of water to keep the land safe for trespassers, even where those trespassers are children.
2. Appellee was the owner of a lot situated at the intersection of two streets in this city, on which was a pond of considerable size, about which children were accustomed to play and to wade and swim in it. Appellant's intestate, a boy 10 years old, while playing in the lot with other children, fell or went into the pond and was drowned. *Held*, that there was no duty resting upon the appellee in the premises, and that a demurrer to a declaration seeking to hold her liable for his death was properly sustained; distinguishing *Railroad Co. v. Stout* (the "Turntable Case"), 17 Wall., 657, and *Railroad Co. v. McDonald*, 152 U. S., 262.

No. 1591. Decided March 6, 1906.

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at law, No. 47,090, entered upon a verdict directed by the court in an action for negligently causing the death of plaintiff's intestate. Affirmed.

*Mr. A. E. L. Leckie, Mr. Creed M. Fulton, and Mr. J. W. Cox* for the appellant.

*Mr. R. S. Huidekoper* for the appellee.

Mr. Justice DUELL delivered the opinion of the Court:

This is an appeal from a judgment of the Supreme Court of the District of Columbia, in a case brought by the appellant, as administratrix of Arthur J. Sullivan, deceased, against the appellee to recover damages for the alleged causing the death of the intestate of the appellant.

A demurrer was filed to the declaration, and being sustained, the plaintiff has taken this appeal.

The facts as disclosed by the declaration and an amendment thereto are in substance these: Virginia C. Huidekoper is the owner of a parcel of land in block 146 of Burleith Addition to West Washington, located at the intersection of Thirty-seventh and W streets, northwest, over which flowed two small streams of water; that said streets were so constructed that they acted as a dam to the water flowing over the land, causing a pond to be formed of a size about 250 feet long by 90 feet wide, with a depth varying from 6 to 10 feet, and its bottom being covered by a dangerous, muddy, and sticky mire 2 feet in thickness; that in the immediate vicinity of, and surrounding the land, were the residences of a large number of persons, including many young children of a tender age; that the pond was attractive to young children, many of whom were and had been for a number of years accustomed to play about and wade and swim in it; that no efforts were made to drain off the water, or to fill in the depression, or to fence in the pond; that all these facts were known to Mrs. Huidekoper; that the intestate was a child of tender years,

incapable of exercising ordinary care and prudence, and that, being ignorant of the dangerous character of the pond, he went to the lot with other children on June 8, 1904, and fell or went into said pond and was drowned; and that the child left surviving him a father and mother, and a brother and sister. Damages in the sum of \$10,000 were claimed. The sole assignment of error is that the court erred in sustaining the demurrer of the appellee.

It is contended by appellant that the facts set out in the declaration call for the determination by a jury whether or not the appellee was guilty of negligence. As stated on behalf of appellant the primary question here involves the duty of a land-owner to a child, who is a trespasser upon his premises, whether there is any duty owed, and if so, as to its nature. The question presented, while interesting, is not a novel one, and the books are full of cases wherein, under varying phases, the courts have considered it. As is to be expected, there is a lack of uniformity in the decisions, but we apprehend that when the cases are considered in the light of the facts of each case the differences in the rulings of the various tribunals called upon to pass upon such questions are more seeming than real.

In the case at bar it appears that a land-owner knowingly permitted a pond about 250 feet long, 90 feet wide, and from 6 to 10 feet deep to remain upon her land, which is situated at the intersection of two streets in or near a suburb which is an extension of the city of Washington, District of Columbia. So far, at least, as this case is concerned we deem it immaterial whether the pond be a natural or an artificial one. It was of such size, and children were so accustomed to play about it and wade and swim in it, that the element of an unknown, concealed, or hidden danger is also absent. Its existence and its use by children, according to the declaration, was notorious and must necessarily have been known to those living in the neighborhood, to the parents as well as to the children. The declaration does not state the age of the child, but it was conceded at the hearing and appears by the opinion of the court below that he was about 10 years old. Neither is it averred that the child while walking along the highway fell into the pond; so the question of the liability of the appellee had the child lost his life while lawfully upon the street which immediately bordered upon the pond also is not before us. The facts of the case render inapplicable many of the authorities relied upon by appellant to sustain the proposition that the duty of a property owner to a child trespasser extends so far as to make him liable for maintaining upon his land an unfenced or unguarded pond in or near the extension to a city, the existence of which is apparent and well known.

It is strenuously insisted that the facts in this case bring it within the doctrine laid down in *Stout v. Sioux City Railroad Company*, 17 Wall., 657, and *Union Pacific Railroad Company v. McDonald*, 152 U. S., 262. If the contention is correct it will end the controversy so far as the present appeal is concerned, for we recognize the binding force of these cases, and of course could do nothing but follow them. If,



however, it should require an extension of the principle laid down in those cases to make liable the appellee we should hesitate to so rule.

The first of the two cases is the one commonly known and referred to as the "Turntable Case." It has been repeatedly commented upon by the courts of various States, and, while quite generally recognized, there has been a disinclination to extend the principle laid down to cover cases where the facts are quite different. In hereafter referring to prior adjudications of other courts, with the reasoning and conclusion of which we may agree, we shall limit our review of cases to those decided by the courts in States recognizing the rule laid down in the two cases above referred to.

In *Sioux City R. Co. v. Stout*, supra, it will be recalled that the child was injured by his foot being caught between the fixed rail of the road-bed and the turning rail of the table, while playing with other boys. The boys were turning the table, which could have been prevented by locking the turntable when not in use by the company. This could have been done by repairing a broken latch, which would not have involved any considerable expense or inconvenience. The court, finding that the turntable was a dangerous machine, held that the defendant railroad was liable for the injuries to the child, although he was a trespasser, because by reasonable care the danger could have been obviated. This case is not analogous to that, nor, in our opinion, do the facts bring it within the principle there laid down.

In *Union Pacific R. Co. v. McDonald*, supra, the company had failed to fence in a slack-pit kept upon its land, and a boy was burned by falling on and into it. The slack, on its surface, presented no sign of danger. It also appears that a statute required the company to put a fence around its slack-pit. Under the circumstances of the case, which it is unnecessary for us to set out, the court held that the boy was not a trespasser, and had not been guilty of contributory negligence. Putting aside the requirement of the statute and the finding that the boy was not a trespasser, we do not think that the case, nor any case referred to in the opinion, is controlling as to this case, where the facts are so different. We are not dealing with a case where the injury is caused by negligence in properly guarding dangerous machinery, or by a concealed, dangerous condition the existence of which was not and could not well be known by the child. We find no decision of the Supreme Court of the United States where the facts are the same, or, in our opinion, sufficiently analogous to those in the case at bar, to aid us to arrive at a correct conclusion herein. We therefore turn to the decisions of the Federal and State Courts, and find many cases where the facts are, in controlling features, substantially the same as those in the case under consideration. While there is a lack of uniformity, as might be expected, the great weight of authority is clearly that the land-owner is not liable for accidents occurring under a state of facts such as here shown.

In *Pekin v. McMahon*, 154 Ill., 141, the court held the city of Pekin liable in damages for the death of a boy, who was drowned in a pond or pool on a vacant lot owned by the city. Also,

in *Price v. Atchison Water Co.*, 58 Kansas, 551, the defendant company was held liable for the death of a boy who, without negligence on his part, fell in and was drowned. The company maintained upon its grounds deep reservoirs of water, in which boys, with its knowledge and consent, were accustomed to fish, no reasonable precautions being taken to prevent accidents.

Appellant also cites the case of *Car Company v. Cooper*, 60 Ark., 545, where a boy was drowned by walking into a pool of water. This case, in view of the facts disclosed, is not an authority to sustain the broad proposition here contended for. The pool of hot water was covered with pieces of bark, and could not be seen. In *Kinchlow v. Elevator Co.*, 57 Kansas, 374, the boy was injured by falling into a barrel of hot water, the top of which was level with the surface, the covering being loose.

But the reasoning in these cases does not commend itself to our approval. The danger of children who go to swim in ponds and other bodies of water is remote, and accidents are comparatively of rare occurrence. To hold an owner of real estate, upon which there is a body of water, liable for the accidents that may happen to children while trespassing thereon would be to place upon them an unfair burden. The danger is one that can not be guarded against without considerable expense or inconvenience.

The cases holding that there is no breach of duty upon the part of a real estate owner, upon whose land is a pond or other body of water, to keep his land safe for trespassers, even when those trespassers are children, seem to us to be founded upon and supported by reason and common sense. The primary duty to guard and protect a child against patent and unconcealed dangers devolves upon the parent and not upon a stranger. These cases, while approving the so-called "turntable" doctrine, distinguish between attractive and dangerous machinery and ponds and other bodies of water attractive to children and not free from danger.

In *McCabe v. American Woolen Co.*, 124 F. R., 283, affirmed in 132 F. R., 1006, the court sustained a demurrer and held the declaration insufficient where it appeared that the defendant maintained an unguarded mill trench having precipitous banks near the house of the father of the child, who fell in and was drowned. The court, while recognizing the *Stout* and *McDonald* cases, said:

"The case at bar, however, is essentially distinct in this particular. This canal was permanent, open, and plain to view, as much so as though it had been a natural stream, and suggests nothing whatever which would change the relations of the parties from what they would have been had it been a brook or a river. If the defendant is to be held to this plaintiff for not especially guarding it, then the customs of the community must be changed throughout, because it is impossible to distinguish this canal, for the purpose of this case, from a river or a brook, a haymow, an ox-cart left in a farmer's yard, a high ledge, or a field trench, about either of which children may happen to be accustomed to play. We think, therefore, that this canal was an object of such a character that, both from the reason of the thing and the

customs of the community, the defendant was entitled to assume that the plaintiff's natural guardians would protect him from any dangers attached thereto, as they easily could and ought to have done. Therefore, on account of the various distinctions which we have pointed out, and the reasons which we have stated, this suit can not be maintained."

*Peters v. Bowman*, 115 Cal., 345, was a case where it appeared that the defendant permitted a pond to remain on his premises unguarded and unfenced. Children played upon it, and one of them, a boy of eleven, while floating on a raft, fell off and was drowned. The court also recognized and approved the "turntable" cases, but said:

"A body of water, either standing as in ponds or lakes, or running as in rivers and creeks, or ebbing and flowing as on the shores of seas and bays, is a natural incident to all countries which are not deserts. Such a body of water may be found in or close to nearly every city or town in the land; the danger of drowning in it is an apparent open danger, the knowledge of which is common to all; and there is no just view consistent with the recognized right of property owners which would compel one owning land upon which such water, or part of it, stands or flows to fill it up, or surround it with impenetrable wall."

On a petition for a rehearing, it was said:

"A turntable is not only a danger specially created by the act of the owner, but it is a danger of a different kind to those which exist in the order of nature. *A pond, although artificially created, is nowise different from those natural ponds and streams which exist everywhere, and which involve the same dangers and present the same appearance and the same attractions to children.*

A pond can not be rendered inaccessible to boys by any ordinary means. Certainly no ordinary fence around the lot would answer the purpose; and, therefore, to make it safe, it must either be filled or drained. But ponds are always useful, and often necessary. . . . Are we to hold that every owner of a pond or reservoir is liable to damages for any child that comes uninvited upon his premises and happens to fall in the water and drown? If so, then upon the same principle must the owner of a fruit tree be held liable for the death or injury of a child who, attracted by the fruit, climbs into the branches and falls out. But this, we imagine, is an absurdity, for which no one would contend, and it proves that the rule of the turntable cases does not rest upon a principle so broad and of such rigid application as counsel supposes. The owner of a thing dangerous and attractive to children is not always and universally liable for an injury to a child tempted by the attraction. His liability bears a relation to the character of the thing, whether natural and common or artificial and uncommon, to the comparative ease or difficulty of preventing the danger without destroying or impairing the usefulness of the thing, and, in short, to the reasonableness and propriety of his own conduct, in view of all surrounding circumstances and conditions."

To the same effect is the ruling in *Stendal v. Boyd*, 73 Minn., 53, where the court said:

"It is sought, however, to hold the defendant liable upon the facts stated, upon the principle of the 'turntable cases.'"

"The doctrine of the turntable cases is an exception to the rule of non-liability of a landowner for accidents from visible causes to trespassers on his premises. If the exception is to be extended to this case, then the rule of non-liability as to trespassers must be abrogated as to children, and every owner of property must, at his peril, make his premises child-proof. If the owner must guard an artificial pond on his premises, so as to prevent injury to children who may be attracted to it, he must, on the same principle, guard a natural pond; and, if the latter, why not a brook or creek, for all water is equally alluring to children? If he must fence in his stone quarry after it fills with water, so that children can not reach it—a well-nigh impossible task—why should he not be required to do it before, for a stone quarry, with its steep and irregular sides, might well be an attractive and dangerous place to children? It would seem that there is no middle ground, and that the doctrine of the turntable cases ought to be limited to cases of attractive and dangerous machinery. . . . We are of the opinion that the doctrine of the turntable cases ought not to be applied to this case."

"With the exception of *City v. McMahon*, the courts of last resort, including those which recognize the doctrine of the turntable cases, have uniformly denied the liability of a landowner for injuries to trespassing children by reason of open and unguarded ponds and excavations upon his premises."

In *Klix v. Newman*, 68 Wis., 271, the court sustained a demurrer to the declaration, holding that the owner of a vacant lot in a city is under no obligation to fence in a pond on such lot in which surface water collects, and is not liable for the death of a child falling into it while at play on the lot. It was there said:

"If the defendant was bound to so fence or guard the pond, upon what principle or ground does this obligation rest? There can be no liability unless it was his duty to fence the pond. It surely is not the duty of an owner to guard or fence every dangerous hole or pond or stream of water on his premises for the protection of persons going upon his land who had no right to go there. No such rule of law is laid down in the book, and it would be unreasonable to so hold."

In *Moran v. Pullman & Co.*, 134 Mo., 641, which was a "pond" case, the same doctrine was enunciated. The court said:

"The gravamen of plaintiff's action, in substance, is, that the pond was attractive to children, who were accustomed to bathe therein; that it was a dangerous place by reason of the deep hole therein; that defendant knew, or might have known, of the danger of the place to children, and that they were in the habit of bathing in the pond; that the defendant negligently permitted the pond to be frequented by children, to remain unguarded and unfenced, neglected to fill said excavation and to fence the same, as required by divers ordinances which were pleaded, and such failure resulted in the death of plaintiff's son, who, entering the pond

where it seemed to be shallow, fell over into the deep portion and was drowned."

In a later case (*Arnold v. St. Louis*, 152 Mo., 183) demurrers to a petition were held properly sustained where the facts disclosed that plaintiff's intestates were drowned by falling through the ice. It was alleged that the pond was unguarded and unfenced; was near a public school, and was attractive to children, who were in the habit of skating on the pond, which fact was known to the defendants.

Without citing other authorities we are persuaded that the conclusions in the cases cited and the reasoning upon which they are based, are correct, and that in a case, such as the one at bar, it would be unjust to hold the land-owner liable for the death of, or injury to, a child of 10 years of age. We do not consider that the appellee was negligent in not taking steps to prevent the trespassing upon her land by boys of such age as plaintiff's intestate. To hold land-owners responsible under such circumstances would be to impose upon them an oppressive burden, and shift the care of children from their parents to strangers. Every man who has been brought up with the freedom allowed to American boys knows that you might as well try to dam the Nile with bulrushes as to keep boys away from ponds, pools, and other bodies of water. As is well said in *Gillespie v. McGowen*, 100 Penn. St., 144:

"Vacant brickyards and open lots exist on all sides of the city. There are streams and pools of water where children may be drowned; there are inequalities of surface where they may be injured. To compel the owners of such property either to inclose it or fill up their ponds and level the surface, so that trespassers may not be injured, would be an oppressive rule. The law does not require us to enforce any such principle, even where the trespassers are children. We all know that boys of eight years of age indulge in athletic sports. They fish, shoot, swim, and climb trees. All of these amusements are attended with danger, and accidents frequently occur. It is part of a boy's nature to trespass, especially where there is tempting fruit, yet I never heard that it was the duty of an owner of a fruit tree to cut it down because a boy trespasser may possibly fall from its branches. Yet the principle contended for by the plaintiff would bring us to this absurdity if carried to its logical conclusion. Moreover, it would charge the duty of the protection of children upon every member of the community except their parents."

We do not think that the Supreme Court intended that the rule laid down in the "turntable" and "slack pit" cases should be extended to embrace cases such as is the present one. We do not think that appellee owed any such duty in the premises to plaintiff's intestate as is claimed. Nor do we think that she omitted to do anything which a reasonably prudent person would have done.

In arriving at our conclusion we have not overlooked the various District ordinances, police and health regulations, referred to in appellant's brief. We do not think that these extend the duty or obligations owed by the lot owner to a trespassing boy. It appears that the District of Columbia was made a defendant,

but the only judgment appealed from is that in favor of the defendant Huidekoper.

We think that the judgment appealed from should be affirmed, with costs. And it is so ordered.

Affirmed.

JASON W. GEIST, ALIAS JOSEPH GRAHAM,  
ET AL., APPELLANTS,

v.

UNITED STATES.

CONSPIRACY; INDICTMENT, SUFFICIENCY OF.

An indictment under section 5440, R. S., for conspiracy to commit an offense against the United States, charging the defendants with conspiracy to cheat and defraud the members of a partnership by false pretenses, consisting in falsely representing that defendants were representatives and collectors for a firm publishing a mercantile directory; that one Y, to whose business the partnership succeeded, had contracted to advertise the business in said publication; that they were authorized to collect the price for said advertisement; that defendants well knew there was no such firm and that they were not the representatives or collectors of such firm; that on a date named defendants had conspired and agreed together to cheat and defraud the members of said partnership of their money, and on said date had received a check payable to the order of said firm and signed by a member of said partnership, held sufficiently to charge the offense of conspiracy and to furnish defendants with the details of the charges against them.

No. 1628. Decided February 6, 1906.

APPEAL by defendants from a judgment of the Supreme Court of the District of Columbia, Criminal, No. 24,519, entered upon a verdict finding them guilty under an indictment charging a violation of section 5440 Revised Statutes. Affirmed.

*Mr. James A. O'Shea, Mr. Leo P. Harlow, and Mr. W. J. Davidson* for the appellants.

*Mr. D. W. Baker and Mr. J. S. Easby-Smith* for the United States.

*Mr. Justice DUELL* delivered the opinion of the Court:

At the October term, 1904, the appellants, Geist, alias Graham, and Richardson, were indicted in the Supreme Court of the District of Columbia, for the violation of section 5440 of the United States Revised Statutes. They were brought to trial, and on March 3, 1905, found guilty on the second count of the indictment, the Government at the close of the trial having abandoned the first count. A motion was made and overruled in arrest of judgment, and the defendants were sentenced to imprisonment for a term of two years in the penitentiary, and to pay a fine of \$10,000 each. An appeal from this judgment was thereupon taken to this court.

Section 5440, under which the indictment was found, is as follows:

"If two or more persons conspire either to commit any offense against the United States or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be liable to a penalty of not more than \$10,000, or to imprisonment for not more than two years, or to both such fine and imprisonment, in the discretion of the court."

It appears that the section provides that parties may conspire for two distinct purposes, the one "to commit any offense against the United States," the other "to defraud the United States in any manner or for any purpose."

The second count of the indictment charges, or intends to charge, a conspiracy to commit an offense against the United States, and not a conspiracy to defraud the United States. The record does not contain the testimony, and the question before us is as to the sufficiency of the indictment. The reasons upon which the motion to arrest the judgment was based are eighteen in number. The assignments of error are the same except as to the charge of variances between the allegations of the indictment and the facts proven at the trial.

The second assignment is the comprehensive one, the others aiming to point out more specifically the defects, insufficiencies, and lack of precision and completeness of the allegations of the indictment.

It will only be necessary to recite this general assignment and refer in its consideration to the others. It is thus stated:

"2. Because said indictment is defective and insufficient, in that the alleged offenses were not set out with sufficient certainty, completeness, precision, and definiteness, and that said indictment is too vague, indefinite, incomplete, and uncertain to charge in law a crime."

The second count of the indictment is quite lengthy, and unless it is set out in extenso it is somewhat difficult to show just what it charges. It alleges:

"That the said Jason W. Geist, otherwise called Joseph Graham, and the said Frank S. Richardson, . . . wickedly devising and intending to unjustly and unlawfully by the offense of false pretenses to cheat and defraud one Frederick S. Young and one Charles O. Young, partners trading under the firm name and style of the Carriage Repository—Thomas E. Young, of their moneys and property, the said Jason W. Geist, otherwise called Joseph Graham, and the said Frank S. Richardson, both late of the said District, on the fourth day of August in the year of our Lord one thousand nine hundred and four and at the District aforesaid, did fraudulently and unlawfully conspire, combine, confederate, and agree between and among themselves to cheat and defraud the said Frederick S. Young and the said Charles O. Young, partners as aforesaid, of their moneys and property by then and there *falsely representing* to said Frederick S. Young that they, the said Geist, otherwise called Graham, and the said Richardson, were then and there the collectors and representatives of J. H. Howard and Company, of Chicago and New York, publishers of a gazetteer called *The Mercantile Gazetteer*, and that the said gazetteer was a genuine gazetteer published by said J. H. Howard and Company for general reference, and which contained a carefully compiled list of the banks, manufacturers, merchants, wholesale and business interests of the principal cities and supply centers of said United States, and that the late Thomas E. Young, the father of the said Frederick S. Young, had contracted with said J. H. Howard and Company for and in consideration of the sum of six dollars, to ad-

vertise the business of said Young in the said *The Mercantile Gazetteer*, and that they, the said Geist, otherwise called Graham, and the said Richardson, were then and there authorized by said J. H. Howard and Company to collect the said sum of six dollars for said advertisement from the said Frederick S. Young, the said Geist, otherwise called Graham, and the said Richardson, then and there well knowing on said day and year aforesaid at said District, when they fraudulently and unlawfully conspired, combined, confederated and agreed between and among themselves as aforesaid, to cheat and defraud said Frederick S. Young and said Charles O. Young, partners as aforesaid, of their moneys and property, by said false pretenses, that they, the said Geist, otherwise called Graham, and the said Richardson, were not then and there the collectors and representatives of the said J. H. Howard and Company of Chicago and New York, and then and there well knew that there was no such firm as J. H. Howard and Company of Chicago and New York, and then and there well knew when they, the said Geist, otherwise called Graham, and the said Richardson, on the said day and year last aforesaid and at said District, conspired, combined, confederated and agreed together to cheat and defraud by said false pretenses, that they, the said Geist, otherwise called Graham, and the said Richardson, conspired, combined, confederated and agreed together for the purpose of cheating and defrauding the said Frederick S. Young and said Charles O. Young, partners as aforesaid, of their moneys and property, and to effect the object of said conspiracy the said Frank S. Richardson did then and there obtain, by said unlawful conspiracy and said false pretense, from the said Frederick S. Young, a certain other check dated August fourth, one thousand nine hundred and four, drawn on the Lincoln National Bank of said District, for the sum of six dollars, made payable to the order of J. H. Howard and Company and signed Thomas E. Young by Frederick S. Young; against the form of the statute in such case made and provided, and against the peace and Government of the said United States.

"MORGAN H. BEACH,

*Attorney of the United States in and for the District of Columbia.*"

It is, of course, conceded that "in criminal cases, prosecuted under the laws of the United States, the accused has the constitutional right 'to be informed of the nature and cause of the accusation.'" U. S. v. Cruikshank et al., 92 U. S., 542. The reasons why an indictment must be sufficiently clear and certain to inform accused and the court of the crime are stated in the same case to be:

"First. To furnish the accused with such a description of the charge against him as will enable him to make his defense and avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and,

"Second. To inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. For this, facts are to be stated, not conclusions of law alone. A crime is made

up of acts and intent; and these must be set forth in the indictment, with reasonable particularity of time, place, and circumstances."

A reading of the indictment in this case would seem to be sufficient to give both the accused and the court all needed information.

The accused are charged with conspiring to cheat and defraud the Youngs of their money by false pretenses, consisting in falsely representing to them that they were representatives and collectors for a firm publishing an advertising directory; that Thomas E. Young, deceased, had contracted to advertise his business in the publication; that they were authorized to collect the price, \$8, for the advertisement, that they well knew that there was no such firm, and that they were not the representatives or collectors of such firm; that on the date named they had conspired and agreed together to cheat and defraud, by the false pretenses set forth, the Youngs out of their money; and that they, on the date named, received a check for \$8, drawn on a bank in the District, made payable to the order of the firm and signed by one of the Youngs.

Surely the allegations were sufficient to furnish the accused with the details of the charge they were to meet and enable them to make their defense, and guard themselves against any further prosecution for the same cause. The court was furnished with sufficient facts to enable it to perform its required duty.

It seems to us that a conspiracy is clearly alleged, and that that conspiracy is one to commit an offense against the United States. The indictment is for conspiracy to commit an offense. Whoever, within the District of Columbia, by any false pretense, with intent to defraud, obtains from a person his signature to a check has committed a crime. Section 842 of the District Code. And that crime is an offense against the United States. *Tyner v. United States*, 23 App. D. C., 324; 32 Wash. Law Rep., 258. The indictment alleges that the defendants conspired, by means of false pretenses (which are set out with sufficient particularity), and with intent to defraud the Youngs of their money, and that they did an overt act, which consisted in obtaining the check for \$8 from them. It must be borne in mind that the offense charged by the indictment is a conspiracy by the defendants to cheat a partnership by false pretenses. It is not an indictment for an offense of cheating by false pretenses. When the charge is of conspiracy to commit an offense, it is not required that the offense be described with the same precision as required in describing the offense itself. *United States v. De Greiff*, 16 Blatchf., 21; *United States v. Dennee*, 3 Woods, 47; *Commonwealth v. Fuller*, 132 Mass., 563.

The criminality of the conspiracy alleged in the indictment before us consists in the unlawful combination of the defendants to accomplish an illegal purpose. That in such cases the "purpose must be fully and clearly stated in the indictment" is the rule enunciated by the Supreme Court. *Pettibone v. U. S.*, 148 U. S., 197. To defraud a person by means of false pretenses is the basis of the criminality of the alleged conspiracy set out in the indictment herein. The defendants are charged with falsely

making certain representations. Those representations are set forth. That those representations were false is also set forth. Those representations are of such a character that the defendants must have known them to be either false or true. The indictment states that the defendants well knew there was no such firm as they are charged with falsely claiming that they represented. There was no demurrer to the indictment, and as the record does not disclose the evidence we must assume that proofs were received, without objection sufficient to support the verdict. Furthermore, if we subject the indictment to a critical scrutiny and admit that its allegations might have been couched in more precise and definite terms, we do not think that any such imperfections tended to the prejudice of the defendants, and that therefore section 1025, United States Revised Statutes, is applicable, and in view of it the indictment can not be held to be bad.

In our opinion the judgment of the court below was correct, and it must therefore be affirmed; and it is so ordered.

Affirmed.

## Supreme Court of the District of Columbia.

DON A. SANFORD, COMPLAINANT,

v.

MARY R. PORTER, ET VIR, DEFENDANTS.

### WILLS; CONSTRUCTION OF DEVISE; EASEMENTS.

1. Testator owned a square of ground in this city divided into three lots. In rear of lots 1 and 2, and abutting on lot 3, was a narrow alley leading into a wider alley running to the street below and used as an outlet for the houses on these lots. The rest of the square was embraced in lot 3. By his will he devised the square as subdivided to his sister for life, and at her death to be divided among her daughters, A, B, and C, who were to take, respectively, lots 1, 2, and 3. No mention was made of the alley. A and B subsequently conveyed lots 1 and 2 to complainant, the deeds purporting to convey the right to the use of said alley. On the death of A and B, C, claiming the fee in the land included in said alley by right of survivorship (testator having died prior to the Code), claimed the right to close said alley. In a suit brought by complainant to enjoin C from closing the alley, held, construing the will, that it was the intent of testator that each of the lots 1, 2, and 3 should have access to the alley, as it had been used for many years; that whoever may hold the fee of the alley under the will holds it subject to the common easement impressed upon it by the testator during his life and which plainly marked it when he made his will and at the time of his death; and an injunction granted as prayed.
2. A formed or enclosed road or alley differs from a mere right of way enjoyed only at intervals, and is considered a continuous and apparent easement which will pass by implied grant without general words.

Equity, No. 23,207. Decided, April 13, 1906.

HEARING on a bill in equity for an injunction.

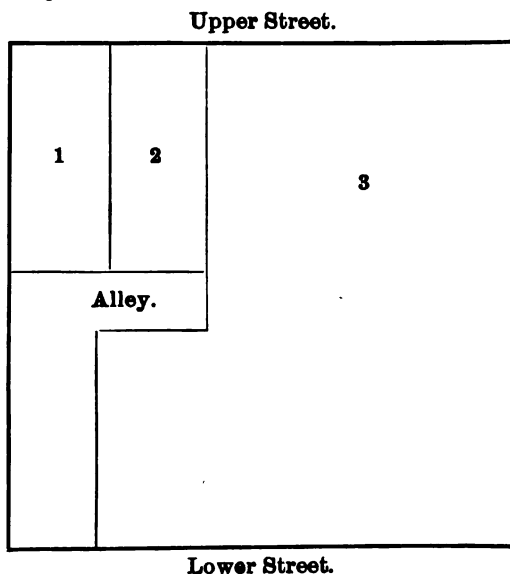
Mr. Fred. McKee, Mr. W. Mosby Williams, and Mr. Creed M. Fulton for complainant.

Messrs. Davis & Tucker and Mr. Wm. M. Lewin for defendants.

Mr. Justice STAFFORD delivered the opinion of the Court:

The bill is brought to have the defendants enjoined from closing up an alleyway leading from the complainant's premises to the street.

To understand the situation in its essential features, we are to imagine a square. A lot in the upper left-hand corner may be called 1. Side by side with this lot is another which may be called 2; they are of equal depth from the upper street on which they front, and along their rear runs a narrow alley, which turns at right angles down into a wider alley running to the lower street, at the bottom of the square. The rest of the square may be numbered 3. All three lots will thus be seen to border upon the alley.



In 1861, the square, with divisions and alley as stated above, was owned by De Vaughn, who then made his will devising the square to his sister for life, and at her death to his sister's daughters, A, B, and C, to be divided as follows: 1 to A, 2 to B, 3 to C, without mentioning the alley. The complainant has become the owner of lots 1 and 2, and has erected a building covering the whole, and C is now threatening to close up the alley so as to prevent the complainant from having access to the street from the rear of his building.

De Vaughn died in 1867. When he died, and also when the will was made, there were two dwelling-houses on lot 1, two dwelling-houses on lot 2, and other buildings on lot 3. The alley had been used as an outlet from the rear of these buildings to the lower street for a great many years. The upper street on which lots 1 and 2 fronted was about twenty (20) feet higher than the alley in the rear of those lots. There was no means of taking away the refuse from the kitchens and cellars and out-houses in the rear of lots 1 and 2 except through this alley, unless they should be taken out through the front doors upon the upper street. C with her husband is the defendant. It is her contention that the effect of the will was to devise the whole square to A, B, and C, as joint tenants, except so far as it was parceled out among them by the division stated in the will; that by that division lot 1 went to A, lot 2 to B, and lot 3 to C;

that these several lots were consequently held and owned in severalty by A, B, and C, respectively, but that the alleyway, not being included in the division, remained the joint property of A, B, and C. A and B have deceased, and C claims to own the alley as survivor, De Vaughn having died prior to the Code, which would now make such an estate an estate in common. A and B undertook to convey to the complainant the right to use the alley in the rear of their lots 1 and 2, but the defendant maintains that their deeds in this respect were inoperative. Being the owner in fee of the alley by right of survivorship, C claims the right to close it, and will do so unless enjoined.

It will thus be seen that the question presented is the true meaning and intent of the will. Did the testator intend that each of the lots 1, 2, and 3, should have access to the alley as it had been used for a great number of years, or did he intend to separate the ownership of the alley from the ownership of the lots in such a way that the lots might come to be owned by one person and the alley by another who might have no interest to keep the alley open, and might insist on closing it? The devisees of the three lots were equally related to the testator and apparently equally dear to him. In his will he devises the property "as subdivided," and this language must refer to the actual subdivision which he had made of the square upon the surface of the earth. The lots had been used according to that subdivision for a long time, and could not be used with reasonable convenience without free access through the alley. Wherever the title to the fee of the alley may rest under the terms of the will it seems highly improbable that the testator intended that the alley should be closed as against either of the recipients of his bounty.

The case is even stronger for the plaintiff than would be a case where the common owner had made several distinct grants to several individuals, as, for instance, if he had made a deed of 1 to A, of 2 to B, and of 3 to C, even if such deeds had been made at the same time. Even in such a case the inference would be very strong and probably prevailing that the grantees were to enjoy in common the easement of ingress and egress through the alley. But here we are dealing with a will, and the prime question is, what was the intention of the testator as indicated by the will itself when applied to the situation existing at the time the will was made, and at the time of the testator's decease? The complainant is making no claim to any right in the fee of the alley, but only to the right to use the alley for the purpose of getting to and from his building. It seems to the court that whoever may hold the fee of the alley under the will must hold it subject to the common easement which had been impressed upon it by the testator himself during his life, and which plainly marked it when he made the will and when he died. In the present case the use which gave rise to the easement had been long continued, and so obvious as to show that it was meant to be permanent, and it was reasonably necessary for the beneficial enjoyment of the premises devised. If the defendant's contention is sound, then the testator left the property in such a way that after the death of A and B,

C, becoming absolute owner of the alleyway by survivorship, could close it as against the heirs of A and B, and render the reasonable use and enjoyment of their premises impracticable. No such intention should be imputed to the testator in the absence of necessity. It seems to the court that there is no necessity for such a construction.

A formed and enclosed road or alley differs from a mere right of way enjoyed only at intervals and is considered a continuous and apparent easement which will pass by implied grant without any large, general words, or, indeed, without any general words at all. If the owner of land makes an artificial, open ditch across it for the purpose of drainage, and afterward sells either the upper or lower portion without reference to the ditch, neither he nor his grantee can afterwards stop up the drain, and an attempt to do so is ground for injunctive relief. 14 Cyc., 1169. Where the owner of two or more adjoining houses sells and conveys one of them to a purchaser, such house is entitled to the benefit and subject to the burden of all existing drains communicating with the other house without any express reservation or grant for that purpose. Idem. If the owner of a house and land makes a formed road over the land for the apparent use of the house, and then conveys the house separately from the land with the ordinary, general words, it seems that a right of way over the road will pass. 14 Cyc., 1170, with cases.

The case here ought certainly to stand as strongly as that of a grant with the usual, general words. In such a case strict and indispensable necessity is not required. Even in the case of a deed it is only such a degree of necessity as renders the easement necessary for the convenient and comfortable enjoyment of the property as it existed when the severance was made; not that it should be absolutely necessary for the enjoyment of the estate granted. Such, at least, appears to be the weight of authority. 14 Cyc., 1171, with cases.

Even if this case were one of separate grants omitting the words "with appurtenances," an easement like that over the alley would pass according to the broader rule here invoked. A good illustration of the principle is to be found in *Coolidge v. Hager*, 43 Vermont, 9. That was a conveyance of a house and lot without mention of a spring owned by the grantor on the land of another, from which water was then running to said house through an aqueduct that was partly in the land conveyed, partly in other adjoining land of the grantor, and partly in the land of the other where the spring was situated. No question was made, nor could be, but that the grant carried all of the aqueduct that was in the land conveyed, and it was held that it carried the water as it was then running with a right to the spring and the aqueduct sufficient for its continuance, as an appurtenance of the house and lot; and this was based, not on the words cum pertinentiis, but on the rule above stated, that everything apparent and continuous that is essential to the beneficial use and enjoyment of the property designated in the grant is, in the absence of language indicating a different intention, to be considered as passing by the grant as far as the grantor had

power to grant it. *McElroy v. McLeay*, 71 Vermont, 396, is an instructive case, containing a careful review of the authorities, and numerous illustrations of the principle may there be found. The complainants are therefore entitled to the relief prayed for.

#### IN THE ESTATE OF JOSEPH S. TUCKER, DECEASED.

DECEDENT'S ESTATES; BENEFIT CERTIFICATES; DESIGNATION OF ESTATE AS BENEFICIARY; WILLS; RENUNCIATION BY WIDOW; ALLOWANCE FOR MONUMENT.

1. A member of two benefit associations, having the right to designate the person or persons to whom the death benefits should be paid, directed, in each case, that the same be paid to "my son C, the executor named in my will." Held, that these directions amounted to a designation of his estate as the beneficiary.
2. By his will decedent gave his wife \$100, directed the expenditure of not exceeding \$200 in erecting a monument and rail over his grave, and made other disposition of the residue. The estate, after payment of debts and funeral expenses, amounted to about \$700. The widow renounced the provision made for her by the will, electing to take in lieu thereof a third of the personal estate. Held, that subject to an allowance of \$50 for the expense of marking the grave, which as to the widow was all that should be deducted, for that purpose she was entitled to one-third of the personal estate, including the money received from the benefit associations.

Administration. No. 13,212.

HEARING on exceptions to the account of an executor.

*Mr. Erskine Gordon* for the exceptant.

*Mr. W. Russell Graham* for the executor.

*Mr. Justice STAFFORD* delivered the opinion of the Court:

The questions presented arise upon the allowance of the executor's account. The decedent left a will which gives \$100 to his widow, and makes various other money bequests and directs that an amount not exceeding \$200 be expended for the erection of a monument and rail over his grave. The estate consists of household furniture, of the appraised value of \$84.25, and money derived from two benefit associations amounting to \$807. The widow has filed a renunciation of the will, electing to take, in lieu of the \$100 bequest, a third of the personal estate, after payment of debts and claims, as she was at liberty to do under section 1173 of the Code. One hundred and forty-two dollars was deducted by one of the associations for funeral expenses before payment to the executor. There are two questions: First, whether any of the benefit funds, and, if so, how much, belongs to the estate, so that one-third of it may be claimed by the widow. The second is, what amount, if any, should be allowed the executor for the erection of a monument and rail?

As a member of the associations the decedent had a right to designate the person or persons to whom the death benefits should be paid. Accordingly, during his life, he made a direction in writing to one of them in the following words: "Pay the amount due on account of my death to my son, De Witt C. L. Tucker, the executor named in my will." He made a similar direction to the other association by word of mouth. If these directions amounted to a designation of his estate as the beneficiary, then the



first question is easily answered, because the will merely determines how the estate should be distributed, and the widow, having waived the will, the estate would be distributed, so far as she is concerned, as if the decedent had died intestate. If, however, these directions did not constitute a designation of his estate as the beneficiary, but only of a person as a trustee, the terms of whose trust are to be found only in the will, then a different answer is required, because a renunciation of the will amounts to a renunciation of the whole benefit to be derived from the designation, and the widow could take only her one-third of the personal estate outside of the benefits, viz, the household furniture. It has been conceded in argument that, even under this view, the widow would be entitled to one-third of her own legacy, on the theory that it would be brought into the estate by force of her renunciation. But this seems to be illogical, for there is a residuary clause, and, if she renounces her legacy, her \$100 would seem to fall into the residuum. It has also been conceded in argument that even under this view the surplus of the benefit funds over and above the specific bequests would form a part of the estate, because the testator by his will declares that his debts shall be paid and the monument erected, and there would be no sufficient estate except the benefits out of which these charges could be paid. Consequently, it is argued that the will must be taken as designating the estate as the beneficiary, at least to the extent of the surplus over the special bequests. But neither does this seem logical. The will could not, in this view, be taken as making the surplus a part of the estate for any purpose except the payment of debts and the erection of the monument, and the widow would not be entitled to her third until after the payment of debts and funeral charges. The decisive question, therefore, seems to be whether the direction given by the deceased in his lifetime amounted to a designation of his estate as beneficiary. If it did the widow is entitled to one-third of the whole personal estate after payment of debts and claims. If not, she is, in fact, entitled to nothing, unless something should remain to her in the furniture after payment of debts and claims.

It seems to the court that a direction to pay to one's executor, or to a certain person as executor, amounts to a direction to pay to one's estate. If a policy of insurance were to read in that way, would not that amount to a designation of the estate as beneficiary? Would it not be, in legal effect, like a policy payable "to the personal representatives of the insured?" Of course, the person named is not entitled to receive the fund until the will has been probated and he has been appointed by the court. But when that has occurred he is the person, and the only person, to whom the associations are bound to pay. How the fund shall be distributed by him is no concern of theirs. There is no direct relation between the legatees and the associations. The associations recognized this obligation and paid the funds to the executor after his appointment, and thereupon the funds became assets of the estate in the hands of the executor, to be distributed according to the will, subject to the widow's right to renounce

the will so far as she is concerned and take her share as if there had been no will. It is to be noted that the direction to the association was not to pay to the person named in the capacity of trustee, but in the capacity of executor. In other words, it was to pay to the officer entrusted with the settlement of the decedent's estate—an officer who is required by law to be appointed by the court, although nominated by the testator. The will itself does not make the executor a trustee. His only duties are those of an executor strictly. He holds the funds as the representative of the decedent's estate. Suppose he had refused to act and an administrator with the will annexed had been appointed. Is there any doubt that the benefit funds would have been payable to the latter? The estate was the real beneficiary; the person was only the representative of the estate. The will does not amount to a designation of the beneficiaries under the contract between the decedent and the association, but merely attempts to determine how the estate shall be distributed. This power of determining is limited, however, so far as the widow is concerned, and to that extent is, at her election, of no force.

In regard to the expense of marking the grave, it seems to the court that a reasonable sum ought to be allowed, and that, considering decedent's station in life and the amount of his estate, an allowance of \$50 ought to be made before the widow should be entitled to a division. This, in addition to the \$142 already expended by the association out of the benefit funds, seems to the court to constitute a fair and reasonable allowance for funeral expenses and monument. *Sinnott v. Kenaday*, 14 App. D. C., 1: 27 Wash. Law Rep., 82. It may be that as to legatees the will must be carried out by the erection of such a monument as the testator prescribed, but as to the widow, we think the allowance here made is all that should be deducted.

#### RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

#### Legal Notices.

##### FIRST INSERTION.

Campbell Carrington, Solicitor  
In the Supreme Court of the District of Columbia.  
Martha M. Proctor, Complainant, v. Montague Proctor,  
Defendant; Clara Bailey, Co-respondent. No.  
25,858. Equity Docket No. 57.

The object of this suit is to obtain an absolute divorce upon the ground of adultery. Provided a copy of this order be published once each week for three successive weeks in The Washington Law Reporter and The Washington Times. On motion of the complainant, by her solicitor, Campbell Carrington, it is this 25th day of April, A. D. 1906, ordered that the defendants, Montague Proctor and Clara Bailey, cause their appearances to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default.

[Seal] By the court: HARRY M. CLABAUGH, Chief Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 17-8t

**Legal Notices.**

**Walter C. Balderston, Attorney**  
**Supreme Court of the District of Columbia,**  
 Holding a Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John W. Fawcett, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of April, 1906. ANNA V. FAWCETT, 1337 G St. N. W. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,622. Administration. [Seal.] 17-3t

**Joseph R. Fague, Attorney**  
**Supreme Court of the District of Columbia,**  
 Holding a Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Jonathan Hamilton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of April, 1906. SAMUEL M. TYLER, 1524 5th St. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,538. Administration. [Seal.] 17-3t

**Wilson & Barksdale, Attorneys**  
**Supreme Court of the District of Columbia,**  
 Holding a Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Kate Ross, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of April, 1906. FRANK E. GIBSON, 929 1st St. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,244. Administration. [Seal.] 17-3t

**Wilson & Barksdale, Attorneys**  
**Supreme Court of the District of Columbia,**  
 Holding a Probate Court.

**This is to Give Notice** That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Charles H. Smith, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of April, 1906. DAVID W. SHELLAND, Worcester, N. Y. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,385. Administration. [Seal.] 17-3t

**J. S. Easby-Smith, Attorney**  
**In the Supreme Court of the District of Columbia.**  
**Grayson L. Thornton, Plaintiff, v. Claude G. Stephenson and Harry L. Wheatley, Defendants.**  
 At Law. No. 43,418.

The object of this suit is to recover four hundred and twenty-five dollars upon three certain promissory notes and to have judgment of condemnation of certain property of the defendant, Claude G. Stephenson, levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, ordered, this 28th day of April, 1906, that the defendant, Claude G. Stephenson, appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation

[Seal] should not be had; otherwise the suit will be prosecuted as in case of default. By the Court: WRIGHT, Justice. Test: John R. Young, Clerk. 17-3t

**Legal Notices.**

**Barton T. Doyle, Attorney**  
**Supreme Court of the District of Columbia,**  
 Holding a Probate Court.

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Justina Lauer, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 20th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 20th day of April, 1906. BURTON T. DOYLE, 622 F St. N. W.; WILLIAM P. C. HAZEN, 511 E. Cap. St. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,510. Administration. [Seal.] 17-3t

**W. F. Mattingly, R. Ross Perry & Son, and John B. Lerner, Solicitors**

**In the Supreme Court of the District of Columbia.**  
**Kate Willard Boyd et al. vs. Joseph Parker Camp.**  
 No. 26,974. Equity Docket No. 57.

The object of this suit is to quiet the title in the complainants to original lot numbered twenty (20) in square numbered two hundred and fifty-four (254), in the city of Washington, D. C. On motion of the complainants, it is this 24th day of April, A. D. 1906, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter; otherwise the cause will be proceeded with as in case of default. By the court: HARRY M. CLABAUGH, Chief Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 17-3t

**Jos. A. Burkart, Attorney**  
**Supreme Court of the District of Columbia,**  
 Holding Probate Court.

**Estate of Nellie McLaughlin, Deceased.**  
 No. 13,559. Administration Docket.

Application having been made herein for letters of administration on said estate by Joseph McLaughlin that said letters issue to Amandus F. Joras, it is ordered, this 23d day of April, A. D. 1906, that David B. McLaughlin, Charles L. Du Rocher, Mary M. McLaughlin, Ernest Salomon, Hazel McLaughlin, and Francis Clarke, and all others concerned, appear in said court on Monday, the 28th day of May, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. [Seal]

Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 17-3t

**Supreme Court of the District of Columbia,**  
 Holding Probate Court.

**This is to Give Notice** That the subscriber, which was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Alice Key Browne, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Tuesday, the 15th day of May, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies, or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 20th day of April, 1906. THE NATIONAL SAFE DEPOSIT, SAVINGS AND TRUST COMPANY OF THE DISTRICT OF COLUMBIA, by William D. Hoover, Second Vice-President. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,811. Administration. [Seal.] 17-3t

The Law Reporter Printing Company's office is now the cleanest, most comfortable and best conducted one in the city of Washington, having a head for every department of the business. It will be kept so, in order that the public may be expeditiously served.

**Legal Notices.**

**R. Ross Perry and Son, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the State of Illinois, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William Hall Fory Blodgett, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of April, 1906. WILLIAM B. COLT, 453 Federal Bldg., Chicago, Ill. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,624. Administration. [Seal.] 17-3t

**E. H. Thomas and James Francis Smith, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding a District Court.**

In re Extension of Rhode Island Avenue. District Court No. 682. Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of an act of Congress approved February 19, 1906, entitled "An act authorizing the extension of Rhode Island avenue northeast," have filed a petition in this court praying the condemnation of the land necessary for the extension of Rhode Island avenue from Lincoln Road to Fourth street east in the District of Columbia, as shown on a plat or map prepared by the said Commissioners and annexed to their said petition and marked "Exhibit D. C. No. 1;" and praying, also, that a jury of seven judicious, disinterested men, not related to any person interested in these proceedings, and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States Marshal for the District of Columbia to assess the damages each owner of land taken may sustain by reason of the extending of said avenue and the condemnation of the land necessary for the purposes of such extension, and to assess the benefits resulting therefrom, as provided in the aforesaid act of Congress. It is by the court, this 23d day of April, A. D. 1906, ordered that all persons having any interest in these proceedings be, and they are hereby, warned and required to appear in this court on or before the 8th day of May, 1906, at 10 o'clock A. M., and to continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be summoned herein; and it is further ordered that a copy of this notice and order be published once in The Washington Law Reporter and, on six secular days, in The Evening Star, The Washington Post, and The Washington Times, newspapers published in said District, before the said 8th day of May, A. D. 1906. It is further ordered that a copy of this notice and order be served by the United States Marshal for said District, or his deputies, upon such owners of the land to be condemned herein as may be found by said marshal or his deputies within the District of Columbia before the said 8th day of May, A. D. 1906. By the Court: JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 17-1t

**SECOND INSERTION.**

**Wm. A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

Estate of John H. Elliott, Deceased.  
 No. 18,438. Administration Docket.—  
 Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by the American Security and Trust Company, the executor in said will named, it is ordered this 18th day of April, A. D. 1906, that Middleon S. Elliott, Charles P. Elliott and Rosa Elliott, and all others concerned, appear in said court on Tuesday, the 23d day of May, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in the Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day.  
 [Seal] WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 16-3t

**Legal Notices.**

[Filed March 30, 1906. J. R. Young, Clerk.]

**Gordon & Gordon, Attorneys**  
**In the Supreme Court of the District of Columbia.**  
**William Wheatley et al. vs. Marion W. McCullough**  
**et al. Equity, No. 22,275. Doc. 50.**

The trustees herein having reported an offer from the Columbia National Sand Dredging Company to purchase parts of square eleven hundred and seventy-three (1173) in the city of Washington, District of Columbia, fronting about one hundred and twenty-eight feet eight inches (128 ft. 8 in.) on the south side of Water (K) street northwest, and running back to the channel of the Potomac River, for the sum of fifty thousand (\$50,000) dollars, all cash or one-third cash, balance in one, two, and three years, in equal instalments, with five per cent interest, payable semi-annually, subject to the payment of a brokerage commission of one thousand (\$1,000) dollars; it is, this 30th day of March, A. D. 1906, ordered that said offer be accepted and sale made thereunder be ratified and confirmed, unless cause to the contrary be shown on or before the 30th day of April, 1906. Provided a copy of this order be published in The Washington Law Reporter once each of three successive weeks before said last named day. HARRY M. CLABAUGH, Chief Justice. A true copy.  
 Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 16-3t

**William B. Reilly, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

Estate of Robert L. Beatty, Deceased.  
 No. 13,600. Administration Docket.—  
 Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration cum testamento annexo on said estate, by Richard Murphy, it is ordered this 18th day of April, A. D. 1906, that notice is hereby given to Tracy Beatty, a brother, and the unknown heirs of Charles Beatty, deceased, the heirs at law and next of kin of Robert L. Beatty, deceased, and all others concerned, appear in said court on Tuesday, the 23d day of May, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Post, once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 16-3t

**Hamilton & Colbert, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

Estate of Francis H. Hill, Deceased.  
 No. 13,485. Administration Docket 34.  
 Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by George E. Hamilton, the executor named in said will, it is ordered this 6th day of April, A. D. 1906, that Mary Hester Sterrett, Eleanor Blunt, Mary H. Bryan, Henrietta Willson, Nannie Willson, Emma Sutton, Alice Willson, Nannie Hamilton, Elizabeth Camp, George Wallace, James B. Willson, Francis Willson, Hayward Willson, Frederick Willson, Martha Neale Willson, Mrs. Horace Willson, Carroll W. Willson, Neale W. Willson, and the unknown heirs at law of Francis H. Hill, deceased, and all others concerned, appear in said court on Tuesday, the 23d day of May, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: M. J. Griffith, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 16-3t

New corporations can procure from the Law Reporter Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated, numbered, and bound.

**Legal Notices.****Hamilton & Colbert, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of David Murphy, Deceased.  
No. 13,571. Administration Docket 85.**

Application having been made herein for probate of the last will and testament and a codicil thereto of said deceased, and for letters testamentary on said estate, by Michael J. Colbert and James F. Shea, named as executors in said last will and testament, it is ordered, this 18th day of April, A. D. 1906, that John Murphy, Mary McPartland, Ellen Murphy, John Murphy, Jr., James Murphy, John Murphy, son of Patrick, Mary Ann Roach, and all others concerned, appear in said court on Friday, the 1st day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] (Signed) WENDELL P. STAFFORD, Justice.  
Attest: Wm. C. Taylor, Deputy Register of  
Wills for the District of Columbia, Clerk of the Probate Court. 16-3t

**Hamilton & Colbert, Attorneys**

**In the Supreme Court of the District of Columbia.  
The Baltimore and Ohio Railroad Company v. Richard E. Simmes, the Unknown Heirs, Allenees, and Devisees of Richard E. Simmes. Equity. No. 26,049.**

The object of this suit is to declare the title of the complainant to the real estate situate in the city of Washington, District of Columbia, known as all of original lot numbered fourteen (14) in square numbered six hundred and eighty-one (681), except so much of said lot as was conveyed to the Baltimore and Ohio Railroad Company by Nicholas Acker and wife, by deed dated September 12, 1873, and recorded September 20, 1873, in liber 723, folio 433, of the land records of the District of Columbia, to be good in fee simple, by reason of adverse possession, and to declare the title of complainant to be good in it of record, and to perpetually enjoin the defendants from asserting any title to said real estate. On motion of the complainant, by its solicitors, Hamilton & Colbert, it is, by the court, this 16th day of April, A. D. 1906, ordered that the defendants, Richard E. Simmes, and the unknown heirs, allenees, and devisees of said Richard E. Simmes, cause their appearance to be entered herein on or before the first rule day occurring after the fortieth day, exclusive of Sundays and legal holidays, after the date of the first publication of this order; otherwise this cause will be proceeded with as in case of default. The court is satisfied, upon good cause shown, as appears by the affidavit filed herein, that it is not necessary that this order should be published at least twice a month during the period of not less than three months. This order shall be published at least once a week for four successive weeks before said return day; provided that said order shall be published twice a month in the month of April, 1906, and twice a month in the month of May, 1906. This order shall be published in The Washington Law Reporter, the court not deeming it necessary that the same should be published in any other paper, and no other paper having been selected by the parties. WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 16-4t

**Hamilton & Colbert, Attorneys**

**Supreme Court of the District of Columbia,  
Holding Probate Court.**

**Estate of Henry Kraak, Deceased.  
No. 13,580. Administration Docket —.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Union Trust Company of the District of Columbia and Henry C. Kraak, the executors named in said will, it is ordered this 17th day of April, A. D. 1906, that Wilhelmina Howard and Florence Marie Irving, and all others concerned, appear in said court on Tuesday, the 22d day of May, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day.

[Seal] return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 16-3t

**Legal Notices.****E. S. Mussey, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Mary Emily Bates Coues, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 12th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 16th day of April, 1906. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary; ELLEN S. MUSSEY, 416 Fifth St. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,514. Administration. [Seal.] 16-3t

**Wm. A. McKenney, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary M. B. Whitman, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of April, 1906. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,554. Administration. [Seal.] 16-3t

**J. J. Hamilton and Lawrence Hufty, Solicitors**

**In the Supreme Court of the District of Columbia.  
John J. Hamilton and Lawrence Hufty, Collectors,  
etc., vs. John C. Regan et al. No. 26,078. Equity  
Docket No. —.**

The object of this suit is to obtain a decree for the possession of a sum of money now held by the Treasurer of the United States as Commissioner of the Sinking Fund of the District of Columbia, amounting to about \$3,674.75, and being a portion of the retain due J. C. Regan & Co., under contract No. 2754, which was entered into by said Regan & Co. with the District of Columbia for the construction of the Brightwood reservoir. Provided a copy of this order be published once a week for three successive weeks before said return day in The Washington Law Reporter and The Washington Post. On motion of the complainants, it is this 17th day of April, A. D. 1906, ordered that the defendants, John C. Regan and Dominic E. Regan, trading as J. C. Regan & Co., cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the court: WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 16-3t

**Wm. A. McKenney, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Lawrence P. Graham, Deceased.  
No. 13,553. Administration Docket —.**

Application having been made herein for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by the American Security and Trust Company, the executor named in said will, it is ordered this 16th day of April, A. D. 1906, that Thomas Peyton Gwynne, Worth Odgen Gwynne, Frederick Key Gwynne, Lizzie Peyton Robinson, Campbell Lawson, Thomas Lawson, William Lawson, Jennie G. George, Lawrence P. Graham, James Duncan Graham, — White, Beattie White Watson, and all others concerned, appear in said court on Tuesday, the 22d day of May, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day.

[Seal] WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 16-3t

**Legal Notices.**

**Alexander H. Bell, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of Daniel McNamara, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of April, 1906. MARY C. MCNAMARA, 632 8th st. S. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,548. Administration. [Seal.] 16-St

**Lester & Price, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the State of Maryland and the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Mary Schwakoff, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 18th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 18th day of April, 1906. CHARLES B. MEYD, Frederick and Athol aves., Balto., Md.; GEORGE SCHWAKOFF, 811 11th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,602. Administration. [Seal.] 16-St

**Wm. A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Samuel P. Langley, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of April, 1906. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,550. Administration. [Seal.] 16-St

**Thos. Walker, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Nellie Tyler, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of April, 1906. WILLIAM D. JARVIS, 120 D st. S. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,109. Administration. [Seal.] 16-St

**M. F. Mangan, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Julius E. Juenemann, late of the State of Maryland, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of April, 1906. JOHANNES W. JUENEMANN, Ardwick, Md. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,499. Administration. [Seal.] 16-St

**Legal Notices.**

**W. Mosby Williams, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Frances L. Robinson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of April, 1906. THOMAS P. WOODWARD, 610 18th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,582. Administration. [Seal.] 16-St

**THIRD INSERTION.**

**Carlisle & Johnson, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Margaret McAllister, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand, this 8d day of April, 1906. BRIDGET McALLISTER MCCORMICK, 700 B st. S. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,551. Administration. [Seal.] 16-St

**J. J. Darlington, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Claas Denekas, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 4th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 4th day of April, 1906. ERNEST A. SELLHAUSEN, 640 G st. N. W.; GUSTAV H. SCHULZE, 1751 Lat. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,406. Adm. [Seal.] 16-St

**Edward S. Bailey, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of George Thomas Clark, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of April, 1906. E. ELMO CLARK, Pacific Bldg. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,597. Administration. [Seal.] 15-St

**S. E. Thomas, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John E. Burns, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of April, 1906. MICHAEL T. BURNS, 323 Md. ave. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,587. Administration. [Seal.] 15-St

**Legal Notices.****Douglas & Douglas, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of David H. Fenton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 9th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of April, 1906. KATHARINE JORDAN FENTON, 1415 Chapin st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,542. Administration [Seal.] 15-St

**Lambert & Baker, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Edward Shea, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of April, 1906. HELEN F. SHEA, 325 Maryland ave. S. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,544. Administration. [Seal.] 15-St

**John E. Taylor & E. B. Sherrill, Solicitors****In the Supreme Court of the District of Columbia.**

**Mary A. Knopp, Complainant, v. Elizabeth A. Durkin et al., Defendants.** Equity, No. 25,900.

John E. Taylor and Edgar B. Sherrill, trustees, having reported to the court the sale of the real estate described in the bill of complaint and answers in the above entitled cause, to wit, all that certain piece or parcel of land and premises situate and being in the City of Washington, in the District of Columbia, known and distinguished as and being part of lot numbered 188, in square 108, in what is known as Beatty and Hawkins' addition to Georgetown, now part of Washington, D. C., bounded as follows: beginning at a point on 33d street at the end of 40 feet measured north from the intersection of 33d and Q streets, and running thence on said 33d street north 26 feet 8 inches; thence west to the rear line of said lot; thence south 13 feet 4 inches; thence southeast and east in accordance with the original record line of said part of said lot to the point of beginning (said premises being known as No. 1604 33d street N. W.), to Mary A. Knopp for the sum of three thousand three hundred and seventy dollars (\$3,370.00). It is by the court this 7th day of April, 1906, adjudged, ordered, and decreed that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 8th day of May, 1906; provided a copy of this order be published once a week for three successive weeks before said last [Seal] mentioned date in The Washington Law Reporter. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 15-St

**E. L. Gies, Attorney**

**In the Supreme Court of the District of Columbia.**  
**Minnie Adelaide Goodman, Complainant, v. Robert D. Goodman and Cornelia D. LeGourd, Defendants.** Equity, No. 26,108.

The object of this suit is to obtain a divorce "a vinculo matrimonii" from the defendant, Robert D. Goodman. On motion of the complainant, it is this 10th day of April, A. D. 1906, ordered, that the defendants, Robert D. Goodman and Cornelia D. LeGourd, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order to be published in The [Seal] Washington Law Reporter and The Washington Times, once a week for three successive weeks. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 15-St

**Legal Notices.****H. G. Kimball, Solicitor****In the Supreme Court of the District of Columbia.**

**Francis I. Willis, Complainant, v. Etta Brent Heiskell et al., Defendants.** Equity, No. 26,083.

The object of this suit is to establish of record the title in fee simple of the complainant to lot numbered eighty-three (83) in Henry L. Mann's subdivision of part of original lot twelve (12) in square five hundred and fifty-four, in the city of Washington, District of Columbia. On motion of the complainant, by his solicitor, it is, this 8th day of April, A. D. 1906, ordered that the defendants, Etta Brent Heiskell, the unknown heirs, allenees, and devisees of Notley Young, deceased, and the unknown heirs, allenees, and devisees of Samuel Burch, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order to be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star, good cause for shortening the period of publication having been [Seal] shown. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 15-St

**C. H. Stanley, Attorney**

**8 E. Lexington St., Baltimore, Md., Care of Fillmore Bell.**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Cornelia Mossell, Deceased.**

No. 13,575. Administration Docket.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Charles W. Mossell, it is ordered this 12th day of April, A. D. 1906, that Richard Morris, Rev. B. F. Lee, Alphonso Tacker, and all others concerned, appear in said court on Wednesday, the 10th day of May, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] WENDELL P. STAFFORD, Justice. Attest:

Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 15-St

**Leon Tobriner, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Plus Stang, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 30th day of April, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies, or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 10th day of April, 1906. CARL HAMMEL, by Leon Tobriner, Attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,722. Administration. [Seal.] 15-St

**Millan & Smith, Attorneys****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the State of Pennsylvania and the District of Columbia, respectively, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Frederick A. Stier, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 6th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 6th day of April, 1906. FERNANDO H. STIER, Pa. Bldg., Phila., Pa.; WILLIAM W. MILLAN, Columbian Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,580. Administration. [Seal.] 15-St



**Legal Notices.**

**Howard B. Hodge, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **William H. Ryne**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of April, 1906. **RICHARD C. RYNEX**, Takoma Park, Md. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,564. Administration. [Seal.] 15-31

**Campbell Carrington, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Blanche Belle Baldwin v. John T. Baldwin.**  
 No. 25,797. Equity Docket, No. 87.

The object of this suit is to obtain an absolute divorce upon the ground of adultery. Provided a copy of this order be published once each week for three successive weeks in *The Washington Law Reporter* and *The Washington Post*. On motion of the complainant, by her solicitor, **Campbell Carrington**, it is, this 16th day of March, A. D. 1906, ordered that the defendant, **John T. Baldwin**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the

[Seal] Court: **HARRY M. CLABAUGH**, Chief Justice. True copy. Test: **John R. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. 15-31

**Jas. B. Archer, Jr., and Jno. Lewis Smith, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters of administration on the estate of **Hudson C. Tanner**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 6th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 6th day of April, 1906. **PRESTON B. RAY**, Wash. Loan & Trust Bldg.; **JNO. LEWIS SMITH**, 458 La. ave. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,568. Administration. [Seal.] 15-31

**FOURTH INSERTION.**

**John A. Butler and C. W. Stetson, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Margaret McDermott et al. v. The Unknown Heirs, Allenees, or Devises of Thomas Turner, S. H. Platt, His Unknown Heirs, Allenees, or Devises.**  
 Equity, No. 26,143.

The object of this suit is to perfect complainants' title to the south 20 feet front by full depth of original lot 15, square 584. In the city of Washington, District of Columbia. On motion of complainants, by their solicitors, **John A. Butler** and **Charles W. Stetson**, it is, this 5th day of April, 1906, ordered that the unknown heirs, devisees, or allenees of **Thomas Turner**, deceased, and **S. H. Platt**, or if he be dead, his unknown heirs, devisees, or allenees, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of forty days, exclusive of Sundays and legal holidays, from the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order shall be published in *The Washington Law Reporter* and *The Washington Times* once a week for four successive weeks, sufficient cause having been shown for dispensing with a longer

[Seal] period of publication. **HARRY M. CLABAUGH**, Chief Justice. A true copy. Test: **J. R. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. 14-41

Justice blanks of every description for sale at this office.

**Legal Notices.**

**O. Clinton James, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Samuel Rothert et al., Complainants, v. Harriet P. Gunnell et al., Defendants.** Equity, No. 26,188. Docket 88.

The object of this suit is to establish the title of the complainants against the defendants by adverse possession to original lot eight (8) and the west thirty-six and one-half (36½) feet of original lot two (2), now being identical with lot 18 of **Isabella Rothert et al.**'s subdivision of said part of said lot two (2) as per plat in book 31, page 27, surveyor's office of the District of Columbia, in square seven hundred and ninety-two (792), Washington, District of Columbia. On motion of the complainants, it is, this 6th day of April, A. D. 1906, ordered that the defendants, **Louisa H. McLaughlin**, **Elizabeth Miller**, **Hellen Karna**, **James H. Hill**, **William Brooke**, **Anna Brooke**, **Esther Brooke**, **Helen Brooke**, **Annie Brooke**, **John Van Ness Phillip**, **Herman H. Phillip**, **Gaston P. Phillip**, **Elizabeth W. Phillip**, **Madalina Van Ness**, **Christina D'Aubry**, **Louis J. D'Aubry**, **Edward Van Ness**, **Charles W. Van Ness**, **Margarita Van Ness**, **Anna Van Ness**, **Julia A. Van Ness**, **Anna W. Loney**, **Henry Loney**, **Meta Hutton**, **Nathaniel H. Hutton**, **Eugene Van Ness**, **Helen Van Ness**, **Julia I. Van Ness**, **Wm. P. Van Ness**, **Ann G. W. Van Ness**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs or devisees or allenees of such of the above-named defendants as are dead, and the unknown heirs or devisees or allenees of **John P. Van Ness**, **Eugene Van Ness**, **Cornelius P. Van Ness**, **Matilda E. Van Ness**, **Washington I. Van Ness**, **Charles M. Van Ness**, **Richard Smith**, **John Bassett**, **George Andrews**, and **Josiah L. Deane**, cause their appearance to be entered herein on or before the first rule day occurring three weeks after the first publication of this order, good cause therefor having been shown to the satisfaction of the court; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week in four successive weeks prior to said return day in *The Washington Law Reporter* and *The Evening Star*. By the Court: **HARRY M. CLABAUGH**, Chief Justice. A true copy. Test: **J. R. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. 14-41

**SIXTH INSERTION.**

**Leon Tobriner and Byron U. Graham, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Isador Neuburger, Trustee, v. Charles W. Dant et al.**  
 No. 26,838. Equity.

The object of this suit is to perfect complainant's title to part of lot lettered "G" in Benjamin Pollard's subdivision of part of square numbered five hundred and seventy (570) as per plat recorded in *liber N. K.*, folio 177, of the records of the office of the surveyor of the District of Columbia, described as follows: Beginning for the same on "D" street at the southwest corner of said lot, and running thence east on said street seventeen (17) feet six (6) inches; thence north one hundred and twenty (120) feet to a public alley fifteen (15) feet wide; thence west on said alley seventeen (17) feet six (6) inches to the northwest corner of said lot; and thence south one hundred and twenty (120) feet to the place of beginning. On motion of the complainant, by his solicitors, **Leon Tobriner** and **Byron U. Graham**, it is this seventh (7) day of March, A. D. 1906, ordered that the defendants, **Annie Middleton**, **Edith LePreux**, **Fannie Mullen**, **George Dant**, **Allan Dant**, **Victor Dant**, **Frances P. Hurley**, **George J. Hurley**, and **William B. Hurley**, cause their appearance to be entered herein on or before the fortieth (40th) day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs, allenees, and devisees of **Richard T. Queen**, cause their appearance to be entered herein on or before the first rule day occurring three months after the publication of this order; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks prior to said first return day and twice a month for three successive months prior to said later return day (the last publication to include one of the former publications) in *The Washington Law Reporter* and *The Washington Times*. By the court: **HARRY M. CLABAUGH**, Chief Justice. A true copy. Test: **J. R. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. mar. 9-16-23-30; apr 20-27; may 18-25-1906



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## THIS WEEK'S DECISIONS BY THE COURT OF APPEALS.

### Embezzlement by Receiver; Applicability of Code.

In *Fields v. United States*, the appellant was convicted of embezzlement of funds in his hands as receiver, and sentenced to a term of five years in the penitentiary, with hard labor. The indictment was brought under section 841 of the Code, and it was contended by the appellant that the law was inapplicable by reason of the fact that the money had come into his hands several years before the Code went into effect. This contention the Court of Appeals denies, in an opinion by Mr. Chief Justice Shepard, holding that it was the intention of Congress to enact a statute applying not only to cases in which money was thereafter received, but also to cases in which funds had previously come into the possession of receivers, provided the conversion occurred after the Code went into effect. It was also contended that the money was not the property of the association, because the property had been transferred; but the court held that the transfer having been set aside by a court of equity, the money was still the property of the association. The sentence of the trial court was modified so as to strike therefrom the provision as to hard labor, and as so modified affirmed.

### Bond, Action On; Judgment Reversed.

In the case of *United States v. Day et al.*, the suit was brought by the United States against the sureties on a bond given Charles E. Day as vice and deputy consul-general of the United States at Berlin. The plaintiff claimed \$1,533.74, but the lower court gave judgment for \$116.09. The judgment is reversed and a new trial ordered, in an opinion by Mr. Chief Justice Shepard.

### Injunction; Bay Window Over Parking.

In *Guerin v. Macfarland et al.*, the appeal was from a decree of the court below, in a suit instituted by the District Commissioners to enjoin the appellant from the erection or maintenance of a bay window projecting over parking in front of his property. Appellant obtained a permit to repair premises No. 412 East Capitol street, and proceeded to erect a bay window which extended beyond the building line on to the parking, and an injunction was granted. The right of the Commissioners to maintain the suit is affirmed in an opinion by Mr. Chief Justice Shepard.

### Equitable Liens; Bankruptcy; Title of Trustee Subject to; Jurisdiction of Equity in Suit to Establish.

In *Orosby v. Ridout et al.*, the suit was brought by the appellant to establish an equitable lien in her favor in respect of certain real estate. The trial court held that the adjudication of bankruptcy against one of the defendants excluded the equity court from taking jurisdiction to decide the question raised by the bill, and dismissed the bill. This ruling the Court of Appeals, in an opinion by Mr. Justice McComas, holds was error, the court holding that there is nothing in the Bankruptcy Act or its amendments interfering with the ordinary jurisdiction of the equity court to decree an equitable lien in favor of a party entitled thereto. A trustee in bankruptcy, it is held, takes the title to the property of the bankrupt subject to all equities, liens, etc., created either by the bankrupt or by operation of law, existing at the time of the adjudication.

### Real Estate; Commissions on Sale.

In *Dotson v. Milliken*, the action was brought by the appellee to recover \$25,000 as a commission for negotiating a sale of certain coal lands owned by the appellant. On behalf of the appellee it was claimed that he had procured a purchaser able and willing to complete the purchase, but that the sale had not been made by reason of the fact that certain representations made by the appellant to the effect that a railroad company had agreed to construct a branch line into said coal lands proved to be

untrue; the purchaser found by him refusing for that reason to complete the purchase. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, which reviews the evidence, affirms the judgment of the trial court in favor of the plaintiff.

**Ejectment; Evidence; Certified Copy of Will.**

In *Scott v. Herrell*, the appeal was from a judgment entered upon a verdict for defendants directed by the court in an action of ejectment. In tracing their title plaintiffs sought to introduce in evidence a certified copy of the will of one James W. Scott, as admitted to probate in the Orphans' Court of Baltimore, Maryland, but the trial court excluded the evidence. This the Court of Appeals, in an opinion by Mr. Justice McComas, holds was error, such certified copy of the will being admissible under sec. 1071 of the Code, and, therefore, reverses the judgment.

**Ejectment; Evidence; Judgment Reversed for Insufficiency of Evidence.**

In *Ford v. Ford*, the appeal was from a judgment for the plaintiff in an action of ejectment. The Court of Appeals, in an opinion by Mr. Justice McComas, reverses this judgment, holding that the evidence was legally insufficient to support the verdict for the plaintiff. The plaintiff's right to recover depended upon his proving that a deed more than thirty years old, purporting to have been executed and acknowledged by him June 2, 1874, was a forgery, and there was little or no evidence in support of his contention save his own denial that he had executed the deed; and it is held that a verdict should have been directed for the defendants.

**Personal Injuries; Defective Condition of Sewer Plate; Evidence.**

In *Scott v. District of Columbia*, the appeal was from a judgment for defendant entered upon a verdict directed by the court in an action for personal injuries. The injury was caused by slipping upon the top plate of a sewer trap. The Court of Appeals, in an opinion by Mr. Justice McComas, affirms the judgment, holding that the evidence was legally insufficient to show a defective condition of the sewer plate prior to the accident. Evidence of subsequent repairs of the plate is held to have been properly excluded.

**Real Estate; Contract to Sell; Breach.**

In *Landvoigt v. Paul*, the appeal was from a judgment in favor of defendant in an action to recover damages for breach of a written contract for the sale of certain lots upon terms

stated therein. The trial court directed a verdict for defendant, upon which judgment was entered; but the Court of Appeals reverses this judgment, in an opinion by Mr. Justice McComas.

**Replevin; Fraudulent Purchase; Notice.**

In *Samaha v. Mason et al.*, the appeal was from a judgment for plaintiffs in an action of replevin brought to recover goods alleged to have been fraudulently purchased by certain of the defendants, and to have been purchased from them by appellant with knowledge of the fraud, or with knowledge at least sufficient to put him on inquiry. The judgment is affirmed, in an opinion by Mr. Justice Duell.

**Libel; Judgment for Plaintiff Affirmed.**

In *Washington Post Company v. Wells*, the appeal was from a judgment in favor of the plaintiff in an action for libel. The Court of Appeals, in an opinion by Mr. Justice Duell, affirms the judgment, holding that the article as published was clearly libelous.

**Husband and Wife; Suit for Maintenance.**

In *Beall v. Beall*, the appeal was from a decree in a suit for maintenance, dismissing a cross-bill for divorce, alleging adultery, and ordering the defendant to pay a certain sum for the separate maintenance of complainant. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, affirms the decree.

**Patent Appeals Decided.**

No. 320. *Andrews v. Nilson*. Reversed. Opinion by Mr. Justice Duell.

No. 326. *Lowrie v. Taylor*. Reversed. Opinion by Mr. Justice Duell.

No. 329. *Taylor v. Lowrie*. Affirmed. Opinion by Mr. Justice Duell.

The acquisition of a mere private way is held, in *Arnsperger v. Crawford* (Md.), 70 L. R. A., 497, not to be a purpose for which the right to exercise the power of eminent domain may be delegated, although the way is intended to connect a private estate with the public highway.

One who, through an agent, conducts a loan office, receiving for loans rates of interest which are so extortionate as to shock the moral sense and be against the public policy of the State, is held, in *Woodson v. Hopkins* (Miss.), 70 L. R. A., 645, not to be entitled to the aid of a court of equity to compel the agent to pay over money received in the business, or to obtain possession of the books, memoranda, and other property pertaining thereto.

That one cannot be a fugitive from justice, subject to interstate rendition, unless he was in the State from which the demand comes at the time the crime is charged to have been committed, is decided in *Farrell v. Hawley* (Conn.), 70 L. R. A., 686.

## Court of Appeals of the District of Columbia.

MOSES SMITH, JR., APPELLANT,

v.

ALFRED B. COSEY.

PARTITION; OUSTER BY TENANT IN COMMON; EVIDENCE; EXTINCTION OF HEIRS OF FATHER; PRACTICE.

1. Whether, where one tenant in common ousts his cotenants and takes exclusive possession of the property, the cotenants can maintain a suit for partition so long as the ouster continues, *quære*.
2. In a suit for partition the bill alleged the death, intestate, of one B, seized of the property, and that complainant and defendants, descendants of brothers and sisters of the mother of B, were his heirs at law. It appeared the property was purchased by B's father, on whose death it descended to B, his brothers and sisters, and the proof failed to show clearly the extinction of the kindred of the blood of the father. *Held* that until such proof was made of the extinction of the numerous classes of heirs of the blood of the father who, under the statute of descents, would be entitled to the property to the exclusion of the kindred of the mother, a court of equity should not decree the title to the property to be in the latter.
3. A motion by the appellee, made after the expiration of the fifteen days prescribed by Rule 23 of this court, within which motion for reargument shall be made, to recall the mandate and for leave to file transcript of certain depositions which, it was alleged, supplied the defect in proof, denied, as coming too late.

No. 1546. Decided February 6, 1906.

APPEAL by defendant from a decree of the Supreme Court of the District of Columbia, in Equity, No. 22,438, in suit for partition. Reversed.

*Mr. C. A. Keigwin* and *Mr. Chas. W. Fitts* for the appellant.

*Mr. Joseph H. Stewart* for the appellee.

*Mr. Justice McCOMAS* delivered the opinion of the Court:

A full statement of this confused case would necessarily reproduce the confusion which the record shows. We state so much of the case as is necessary to make plain the conclusion we have reached.

The second amended bill of complaint of Alfred B. Cosey against Moses Smith and others is a bill for partition or sale of lot 7, in square 80, in the city of Washington. The complainant, Alfred B. Cosey, alleges that George Augustus Butler died seized of this lot and intestate, leaving a widow, and that the complainant, a grand-nephew of Susan Butler, who was the mother of George A. Butler, and the other defendants, equally remote kindred on the maternal side, are the next of kin and heirs at law of George A. Butler. Certain assignees of descendants on the maternal side are made defendants also. The complainant alleges that by sundry conveyances he is seized of seven-twelfths of lot 7, assuming these descendants on the maternal side to be the heirs at law of George A. Butler.

The only defendants who answered deny very material allegations of the bill. One defendant, Moses Smith, the appellant, filed a plea of title to lot 7, in square 80, in himself by conveyance from one Marshall, grantee from the Commissioners of the District pursuant to a sale of the lot for delinquent taxes, and pos-

session adverse and hostile. This plea was first held to be good and later held to be bad. Testimony which supported it was taken and later ordered suppressed. Thereupon arose questions that need not here be decided. The testimony conceded to be properly before this court is insufficient to support the decree for sale granted by the court below.

There is proof enough that Henry Butler, about seventy years ago, purchased the half of lot 7, in square 80, in the city of Washington, and it is likely that it was conveyed to him. It may be that Henry Butler, who lived and died in the house on the lot, died intestate. It would have been easy to prove the fact. There is enough proof to show he was intermarried with Susan Smith, and that the issue of this marriage was three sons and four daughters. It appears that George Augustus Butler was Henry Butler's son, and that he married, and that George A. Butler's widow lived, and perhaps still lives, in England. The proof is silent respecting the issue of that marriage. There may or may not be children now living. There was an order of publication against this widow as Annie S. Butler. There is no proof of her name, but in another equity proceeding, partly set out in the record, she appears to be Mary S. Butler.

Julia, a daughter of Henry and Susan Butler, was married. Whether she left issue does not appear. The proof in the record is not positive, but tends to show that the children of Henry Butler and Susan, his wife, are all dead. It may be they died without issue surviving, though the proof is not sufficient to show it.

If George Augustus Butler survived his brothers and sisters and their issue, and was seized and possessed of this lot and died intestate, it was necessary to show that all the kindred of the blood of the father of George A. Butler were extinct according to the order of the statute of descents. Code, secs. 940-944. This bill of complaint and all the testimony ignores the kindred of the blood of the father, and is only concerned with certain remote descendants on the maternal side. These proceedings assume, but do not prove, the extinction of all descendants of the blood of the father.

The record in this case includes a part of the proceedings under a bill filed by Henry Hannah, assignee of Russell & Co., against the unknown heirs of George Augustus Butler and his widow, to enforce a mortgage imperfect in form, given by George Augustus Butler in China to his employers, Russell & Co., as security for a debt. Under that proceeding this lot 7, in square 80, was decreed to be sold, and in the decree it appears that the widow, Mary S. Butler, had consented to a decree for sale, but it does not appear in the record whether issue of her marriage with George Augustus Butler were or were not then living. The decree was vacated, yet that proceeding appears to have led to this suit for partition; in form, a bill for sale in partition; in substance, a contest between Alfred B. Cosey, a descendant on the maternal side, claiming an interest of seven-twelfths of this lot, and Moses Smith, his cousin, claiming adversely the whole lot, as a purchaser from one Marshall, to whom the Commissioners of the District, in pursuance of

a sale of this lot for delinquent taxes, had conveyed it, and by adverse possession for about a year and a half. Neither litigant appears to have been industrious to discover whether or not nearer kindred still live and inherit from George A. Butler.

From the testimony of Robert W. Diggs, a descendant on the maternal side, it appears that the widow of Henry Butler remained in possession of the houses on lot 7, square 80, after her husband's death, until her death, about 1869, and that three daughters remained with her. He further testified that Archie Lewis took possession of the property until George Augustus Butler came back from China and appointed one Henry Smith his agent to lease the premises and collect the rents. Later, Mr. Hackett, as solicitor for Hannah, the complainant in the bill against the unknown heirs of George A. Butler, assumed control of the property, and on December 15, 1892, William John Miller was appointed trustee to sell the same under a decree after vacated. In 1894 one Lee occupied the house, and later sublet the premises to one West, who part of the time paid rent to Lee, and during the rest of West's four years of occupation he paid rent to no one. West abandoned the premises in 1898, for in 1897 the lot had been sold for delinquent taxes and the tax title was maturing. In May, 1899, the Commissioners of the District conveyed the lot to one Marshall by a deed which appears in the record, as before stated. In October, 1899, Marshall conveyed his title to the appellant, Moses Smith, who appears during the lifetime of his father, Moses Smith, and about November, 1898, to have taken possession of the house and lot, and later to have leased it and collected rents continuously since. Moses Smith, the father, who died February 2, 1900, was a son of Mary Smith, who was a sister of Susan Butler, the mother of George A. Butler. All the parties to this suit are descendants on the maternal side or assignees of such descendants, and whether any of them had such possession as would enable the complainant as a tenant in common to maintain a suit for partition may well be questioned. At the time Moses Smith, Jr., took hostile possession of the property and purchased the tax title his father was living. At the time he took possession his father, Moses Smith, was a tenant in common, according to the complainant's theory of the case.

The complainant's second amended bill states a case of disseizin and ouster by his cotenant, Moses Smith, the father, but he alleges that the facts made said Smith and his son, the appellant, after him trustees for cotenants.

The proof shows that Moses Smith, the son, in the lifetime of his father, acting for himself, possessed himself of the house and lot and received the deed from Marshall and wife, the same Marshall who was the grantee of the tax title. Kent says: "A court of equity does not interfere unless the title be clear, and never where the title is denied or suspicious until the party seeking a partition has had an opportunity to try his title at law." 4 Kent, star page 365.

In other jurisdictions it is held that in proceedings by petition for a partition of land held in common the application must show a seizure and actual possession. A disseizin or an

adverse possession destroys the common possession and bars a suit for a partition so long as the ouster continues. For instance, in *Clapp v. Bromaghane*, 6 Cowen, 530, and *Adams v. Ames Iron Co.*, 24 Conn. 230.

This court has said in *Roller v. Clarke*, 19 App. Cas., D. C., 544: 30 Wash. Law Rep., 323: "It is not alleged in the bill that the complainants were in the actual possession of the lands, or had even a constructive possession, and it is not yet a settled question in this District that without actual possession the court has jurisdiction to entertain a bill for partition at all." *Williams v. Paine*, 169 U. S., 55, 80; 7 App. Cas., D. C., 116, 131: 23 Wash. Law Rep., 626.

In the latter case, *Williams v. Paine*, at page 132, this court, though not deeming it necessary to decide the precise question, said: "It is certainly the well-established doctrine of a court of equity that it will not entertain suits for establishing legal titles and that such doctrine is founded upon the clearest reason, and the departing from that practice, where there is no necessity for so doing, would be subversive of the legal and constitutional distinctions between the different jurisdictions of law and equity." *Hipp v. Babin*, 19 Howard, 277; *Williams v. Paine*, 7 App. Cas., D. C., 132: 23 Wash. Law Rep., 626.

And as the bill in the present case also asks from the appellant an account of rents and profits, we should observe that this court, in the case just cited, adds that, "It is equally well settled that 'where a party has a right to a possession which he can enforce at law, his right to the rents and profits is also a legal right and must be enforced in the same jurisdiction. The instances where bills for an account of rents and profits have been maintained are those in which special grounds have been stated to show that courts of law could not give a plain, adequate, and complete remedy.'" *Hipp v. Babin*, supra.

Mr. Justice Peckham, in the appeal in *Williams v. Paine*, 169 U. S., 80, adds:

"By this disposition of the whole case upon the merits we are not to be considered as deciding that parties situated as the plaintiffs were in this case, out of possession, can maintain an action for partition. We have not discussed that question, and do not decide it, because it was unnecessary on account of the views we have stated in relation to the other aspects of the case."

In *Mudd v. Grinder*, 1 App. Cas., D. C., 419: 21 Wash. Law Rep., 783, this court said:

"The legal title to the property is disputed; and while the jurisdiction of a court of equity to decree partition, or sale for partition, is undoubted in cases where there is no serious question of the legal title as between the parties, it is equally well settled that the court does not sustain a bill for partition unless the legal title be clear."

The appellant, Moses Smith, in his father's lifetime, took possession of the premises in this case decreed to be sold and received the deed for the same from Marshall and wife during the lifetime of his father, the then alleged cotenant of the complainant. Prior to the possession of the appellant, as we have stated, other strangers successively possessed the premises now

sought to be sold in partition for some years. None of the maternal cousins of George A. Butler ever had possession except the appellant, Moses Smith, and the bill alleges and the proof shows that so far as he could do so the appellant had ousted and disseized the complainant and all the alleged kindred of George A. Butler. It is not necessary for us here to characterize the acts of the appellant, nor is it necessary here to decide whether or not, in the absence of seizin and possession, the complainant in this case is entitled to maintain this bill for partition. We would hesitate to affirm his right to maintain such suit for such purpose. We determine this case upon another ground. We conclude that the complainant's proof utterly fails to sustain his bill for partition.

Beside the complainant Cosey, two witnesses only were produced to sustain the title of three classes of alleged cousins on the maternal side to this lot 7, in square 80, of which George A. Butler seems to have died seized.

Cosey, the complainant, was born in Washington in 1863. In boyhood he went to sea, and returning for awhile he thereafter again went to sea and returned to Washington, remaining three or four years, when he was a student at Howard University, and he appears since to have resided in Newark, N. J. He testifies that all of the children of Henry Butler and Susan Butler died, leaving no issue, and all died intestate, so far as he knows. His testimony shows he knew Susan Butler during her widowhood and knew of her death, and knew three of her daughters when the complainant was a child, and that he saw George A. Butler once when he came back from China. He has no knowledge whether the other Butler children are living or dead; whether they left issue or died testate or intestate. His testimony does not show any knowledge whereon he could base his sweeping statement concerning the extinction of the descendants of Henry and Susan Butler. He testified positively that Susan Smith, married to Butler, Millie Smith, married to Manning, and Mary Smith, married to another Smith, were three sisters. He did not know the names of their parents, and proceeds to detail the descendants of Susan Butler's two sisters. Part of his statements are concerning some of the descendants of Mary Smith, conceded to be a sister of Susan Butler, but some of these descendants as witnesses denied the relationship with complainant that he claims.

Robert Diggs, claiming to be a descendant of Millie Manning, testified that the children of Henry Butler were three sons and three daughters, all now dead. He adds, they left no children, "so far as I know." He never knew George A. Butler, or Russell or Roger Butler, because all of them went away before the war. He does not know whether they married or died leaving issue. Julia Butler married Morris, but had no children. He does not know whether the other daughters married or not. Nevertheless, he testifies that all died without issue. Manifestly the knowledge of the witness is not as great as his zeal.

Lucy Ingram, eighty years old and infirm, testified that Susan Butler, Millie Manning, and Mary Smith were sisters, and that the witness was their cousin, and that the youngest of them

was a grown woman when the witness was a child. She knew Julia Butler died soon after her marriage, and was impressed that the three sons and four daughters of Henry and Susan Butler died of consumption. Whether leaving issue or not she did not say. Later she recalled that George A. Butler went to China. Naturally, her testimony concerning the descendants of the two alleged sisters of Susan Butler was fragmentary and almost valueless.

These details are stated here to show the slight and insufficient evidence supporting the decrees appealed from. In *Jennings v. Webb*, 8 App. Cas., D. C., 54: 24 Wash. Law Rep., 84, and in other cases this court has liberally interpreted the statutes intended to preserve rights of former slaves and their descendants in real property and has applied as favorably as possible the rules of evidence respecting the pedigrees of such to enable the courts to help such to establish their rights to real property. We are not now unmindful of the difficulties, but such considerations suggest that the safer rule in a case like this where lot 7, in square 80, descended to George A. Butler, or to him and others, from his father, who bought the lot and himself built the house thereon, where Henry Butler established a home and lived and died, and Susan, his widow, dwelt until her death about 1869, a home located in the central part of this city, a court of equity should require a more careful search for their descendants to be made by a suitor for partition, lest possibly a nomadic family, scattered in adjacent States, inheriting land here, be prejudiced by such a proceeding as this. The court should require some reasonable measure of proof respecting people of a prolific race, and at least should require some proof of the unusual circumstance of the extinction of all the kindred of the blood of the father, before decreeing a sale of this property and the distribution of its proceeds among remote maternal cousins, if, indeed, the proof suffice to show that the complainant and certain of the parties are such maternal cousins.

Titles under decrees of court should be as safe to purchasers as the care of courts can make them. As was said in *Walker v. Lyon*, 6 App. Cas., D. C., 485: 23 Wash. Law Rep., 392: "There must be a good title shown before the court can be compelled to proceed to partition."

There is in this case a lack of proof of essential facts. Until the extinction of the numerous classes of heirs of the blood of the father be shown, a court of equity should not decree the title to the houses and lot to be in the alleged maternal cousins.

There is little evidence of pedigree here. Cosey and Diggs speak as from personal knowledge as to matters they could not know except from hearsay. In the whole case there is no statement except from the maternal side, and all the hearsay as to the pedigree which is the basis of the confident statements of the complainant Cosey is obviously gathered from persons alleging their relationship on the maternal side. Such testimony illustrates the value of the well-settled rules.

"The law resorts to hearsay evidence in cases of pedigree upon the ground of the interest of the declarants in the person *from whom the de-*

*ascent is made out, and their consequent interest in knowing the connection of the family."*

And further says: "But the declarations of a person belonging to another family, such person claiming to be connected with that family only by the intermarriage of a member of each family, rests upon a different principle. A declaration from such a source of the marriage, which constitutes the affinity of the declarant, is not such evidence allunde as the law requires." *Blackburn v. Crawford*, 3 Wallace, 187.

And again, as Justice Cox said in *Anderson v. Smith*, 2 Mackey, 281:

"Some degree of evidence is required, otherwise a mere stranger, by claiming alliance with a family, might assume the power of materially altering the rights of its several branches by making statements in his lifetime respecting them."

It is true that Osey and Diggs do not offer the declarations of any one, but speak confidently as to personal knowledge that which, if sincerely testified, must be the memory of declarations of the family pedigree, declarations of those on the maternal side.

This case has been long pending. The bill has been repeatedly amended. There was ample opportunity to prove the devolution by inheritance of the title of the lot of Henry Butler which descended to his son George, or at least to Henry Butler's children. It is not necessary to decide other questions raised in this record, since at present we find the complainant has failed to sustain his right to relief.

It is true that all the parties in interest are naturally adverse to nearer kindred, but it may be possible that the remote maternal descendants, if given the opportunity, may be able to prove the extinction of all the nearer kindred, or it may be that such exist and may ask to be made parties.

The case, therefore, will be remanded, so that proceedings, if had, may be had in accordance with this opinion, however, with leave to have the bill dismissed if, in the discretion of the court below, that should be proper.

The decree should be reversed with costs and the cause remanded. It is so ordered.

Reversed.

On behalf of the appellee, a motion to recall the mandate, and for leave to file transcript of certain depositions, was made on March 29, 1906.

On April 13, 1906, the motion was denied, Mr. Chief Justice SHEPARD delivering the opinion of the Court:

The right of the complainant to maintain the bill for partition in this case depended, in the first instance, on proof sufficient to show that George Augustus Butler, who died seized of the premises, left no descendants, that the kindred of the blood of his father, who would next have inherited by virtue of the statute of descent, were extinct, and that he and those under whom he claimed, and the defendants and those under whom they claim, were the descendants of the brothers and sisters of Mary S. Butler, the mother of said George A. Butler. The decree appealed from was reversed, because of the insufficiency of the evidence contained in the record, and the cause was remanded, that

the complainant might have the opportunity to perfect his evidence, if so advised.

This motion, filed March 29, 1906, alleges that the depositions of two witnesses were in the testimony on the hearing and were omitted in preparing the transcript. Copies of these are attached, and their contents tend to supply the defects in the proof heretofore indicated; but whether they are sufficient for that purpose we do not now decide. It is stated in the affidavit attached to the motion that these depositions were taken in equity cause No. 13,612, and were introduced in this case and were considered on its hearing below. The record filed in this court on appeal shows that certain parts of the record in cause No. 13,612 were introduced in evidence, but does not show that these depositions were also introduced and read. The motion asks that the mandate be recalled, suggests the diminution of the record, and prays that the same may be supplied by filing an additional transcript setting out said depositions, and that a reargument may be had.

It is not made to appear that these depositions were actually embraced in the record on the hearing below, but, assuming that they were read without objection on that hearing, the motion comes too late.

Parties have themselves to blame if they submit their cases in this court without ascertaining that the records are defective, and availing themselves promptly of the liberal provisions of Rule XIV for supplying such defects.

The insufficiency of the evidence in the respects mentioned was one of the points made on the argument, and had the appellee then suggested a diminution of the record and made a sufficient excuse for his neglect, the hearing might have been postponed with leave to perfect the same. The argument proceeded upon the assumption that the record was complete. The decree was reversed on February 6, 1906, and, upon the expiration of the fifteen days required by Rule XXIII, no motion for reargument having been filed, the mandate issued.

The appellee must now retry his case in the court below, where he will have the opportunity to have it heard upon all of the evidence available, it being understood that the question actually determined by this court was that the evidence contained in the record as submitted was not sufficient to show title in the descendants of the mother of George Augustus Butler.

The motion is denied, with costs.

Motion denied.

UNITED STATES, EX REL. EMILIE C. RILEY, APPELLANT,

v.

THE BALTIMORE & OHIO RAILROAD COMPANY.

RAILROAD COMPANY; CONDEMNATION OF LAND FOR FREIGHT YARD UNDER ACT OF FEBRUARY 28, 1908; MANDAMUS.

1. A property owner whose land, although in proximity to, is not within the limits of the territory embraced in the plans adopted by the Baltimore and Ohio Railroad Company, and approved by the Commissioners of the District, as a location for its freight yards and terminal, pursuant to the authority conferred by the act of Congress of February 28, 1908, which defined the limits within which the location should be made,

- is not within the proviso to section 9 of that act authorizing any property owner whose land is within such location to begin, within two years, "proceedings to compel the appropriation of said land by said company and the payment of damages," etc., and such owner can not compel the company to appropriate her land.
2. Whether, even if the property owner was entitled to the benefit of the said proviso to section 9 of the act, mandamus would be an appropriate remedy, *quære*.

No. 1556. Decided March 6, 1906.

**APPEAL** by relator from an order of the Supreme Court of the District of Columbia, at Law, No. 47,507, dismissing a petition for a writ of mandamus. Affirmed.

*Mr. C. A. Douglass* and *Mr. E. B. Sherrill* for the appellant.

*Mr. G. E. Hamilton* and *Mr. M. J. Colbert* for the appellee.

*Mr. Justice McCOMAS* delivered the opinion of the Court:

This is an appeal from the order overruling the demurrer to the answer of the Baltimore and Ohio Railroad Company, the appellee, and dismissing the petition of the relator, *Emilie O. Riley*, the appellant, for a writ of mandamus.

The appellant filed her petition in the court below against the appellee asking for a writ of mandamus to compel the appellee to institute and prosecute proceedings for the condemnation of certain lots in Eckington, within the area bounded by New York avenue, Florida avenue, Eckington place, and R street, of which lots she is the owner.

The appellee alleges that by the act of February 28, 1903 (32 Stat., 909), the appellee was authorized and empowered to acquire by purchase or condemnation all the land within the boundaries mentioned, for freight terminal purposes; that it was provided in said act that any property owner whose land was included within said boundaries should have the right within two years of the date of the act to institute proceedings to compel the appropriation of said land by the appellee; that the appellee had acquired all the land embraced within such boundaries, except a small portion thereof fronting on R street, and in this portion was the land of the petitioner, but the appellee had refused to purchase or condemn the property of the petitioner.

The appellee answered denying any legal right in the petitioner to the writ of mandamus, admitting that under the act to provide for a union railroad station, the act of Congress before mentioned, the appellee was authorized to locate a freight yard and terminal in Eckington upon the land within the boundaries before mentioned; that under the plans agreed upon between the appellee and the District of Columbia, the appellee will not occupy any of said property north of the south line of Quincy street, and will not be within a square of the appellant's property; that the petitioner's property fronts on R street, and R street, under the acts of Congress referred to, is not to be and can not be closed; that the access of the petitioner to her property, with R street and the alley in the rear open and to remain open, is not and will not be affected; that her property is not so situated as to give her the right to institute proceedings to compel the appellee to acquire her property, and these are not the proceedings contemplated by the union station

act; that the appellee had the right to locate within the area described, but was not compelled to occupy the entire area, and it has exercised its right to occupy a part only, and the lines of its occupation are definitely fixed by an agreement between the appellee and the Commissioners of the District, by the adoption of plans presented by the appellee and approved by the Commissioners.

The appellant demurred to this answer, and her demurrer was overruled, and the court passed an order discharging the rule and dismissing the petition, and from this decision the appellant appeals to this court.

Congress, by two acts approved February 12, 1901, legislated respecting the steam railroad problem at the capital; one of these acts provided for eliminating grade crossings of the Baltimore and Potomac Railroad and required that company to depress its tracks in some places and to elevate them in others, and to provide a better station building; the other of these acts provided for the elimination of certain grade crossings and required and authorized the construction of new terminals and tracks, and for the erection of a new passenger depot at an appropriate place. The act of February 28, 1903 (32 Stat., 909), greatly improved the original project and provided for a union railroad station and marked within definite outlines southward and northward the lines of each railway to the union station, the location of terminal and freight yards, and in the statute broadly and clearly provided for the accomplishment of its object.

Section 4 of the last mentioned act provided for the location of the freight traffic of the appellee:

"Sec. 4. That in order to provide terminal facilities for the freight traffic of the Baltimore and Ohio Railroad Company in lieu of those which said company is now authorized to have within the area to be occupied by the passenger station and terminal, described in the act relating to it, approved February twelfth, nineteen hundred and one, the said Baltimore and Ohio Railroad Company be, and it is hereby, authorized and empowered (in addition to the power and authority conferred upon it by the provisions of said act relating to it, approved February twelfth, nineteen hundred and one) to locate, construct, maintain, and operate tracks, switches, sheds, warehouses, other structures, and facilities necessary or proper for a freight-delivery yard and terminal in Eckington, in, over, and upon the bed of Quincy street and Third street between New York avenue and R street, and in and upon the property bounded by New York avenue, Florida avenue, Eckington place, and R street, outside the limits of the city of Washington; and also within the city of Washington in, over, and upon the bed of Second street between M and N streets and in and upon squares seven hundred and eleven, seven hundred and twelve, and seven hundred and thirteen; and also to extend its tracks and switches north of V street on the east side of the main tracks of its Metropolitan Branch Railroad to Rhode Island avenue extended; and said company is hereby authorized to acquire, by purchase or condemnation, as provided in this act, the lands and property necessary for



the additional freight facilities above mentioned."

We observe this section authorizes and empowers the appellee to locate its instrumentalities for a freight delivery yard and terminal in and upon property bounded in section 4, and to acquire by purchase or condemnation, as provided in this act, "*the lands and property necessary for the additional freight facilities.*" The section authorizes and empowers the appellee to locate its freight yard in and upon a described area. It does not direct the appellee to acquire by purchase or condemnation all the land within the prescribed area; it does authorize the appellee to acquire by purchase or condemnation "*the lands and property necessary for the additional freight facilities.*"

Section 7 requires "that before any portion of the work of construction within the District of Columbia herein described shall be begun, plans thereof in accordance with the provision of this act shall be prepared by the company undertaking such work and shall be submitted for approval to the Commissioners of the District." So far as the plans affect parks and reservations, they shall be submitted to the Secretary of War for approval, and so far as underground construction is involved, the plans shall be submitted for approval to the superintendent of the Library of Congress. Duly authenticated copies of such plans shall, after approval, be filed with the Commissioners of the District and all work done in accordance therewith.

By plans and work of construction we understand the plans for the union station, for viaducts, for tracks raised or depressed, for the location of all tracks, the line of the railways northward and southward, and the width of the strip of land to be taken therefor, the plans for the buildings, and the location of freight yards and terminals, including the lands and property necessary for the same. When such plans were submitted and approved by the Commissioners the property and lands to be taken were definitely, more definitely fixed than in the act itself, and finally determined.

The relevant part of section 9 is as follows:

"SEC. 9. That in the execution of the powers conferred by this Act, or by either of said before-mentioned Acts, approved February twelfth, nineteen hundred and one, by the terminal company, the Philadelphia, Baltimore and Washington Railroad Company, or the Baltimore and Ohio Railroad Company, each of said companies may acquire, by purchase or condemnation, the lands and property necessary for all and every the purposes contemplated by each of said last-mentioned Acts and this Act respectively; and such condemnation shall be effected in the manner and by the methods and processes provided by sections six hundred and forty-eight to six hundred and sixty-three, both inclusive, of the Revised Statutes relating to the District of Columbia, which said sections, despite any repeal thereof, are hereby continued in full force and effect, and, for the purposes contemplated by this section, are hereby specially enacted, with like effect as if the same were incorporated herein at length: *Provided*, That in every case wherein an assessment of damages or an award shall have been

returned by the appraisers the company, upon paying into court the amount so assessed or awarded, may enter upon and take possession of the land and property covered thereby, irrespective of whether exceptions to said assessment or award shall be filed or not, and the subsequent proceeding shall not interfere with or affect such possession, but shall only affect the amount of compensation to be paid. *And provided further*, That any property owner whose land is included within such location shall have the right, within two years, to begin proceedings to compel the appropriation of said land by said company and the payment of damages in the same manner as if the proceedings had been instituted by the company under the provisions of this Act."

In our opinion, by this section the appellee "may acquire by purchase or condemnation the *lands and property necessary* for all and every the purposes contemplated by each of said last mentioned acts and this act respectively," and when the lands and property necessary to be taken by the appellee for the purposes of these acts shall have been determined and submitted to and approved by the Commissioners of the District, then the location of the freight yard and terminal is clearly and finally fixed. Then any property owner whose land is included within *such location* shall have the right within two years to begin proceedings to compel the appropriation of said land by the appellee, as stated in the second proviso to section 9.

"When authority to take property for public use has been conferred by the legislature, it rests with the grantee to determine whether it shall be exercised, and when and to what extent it shall be exercised, provided that the power is not exceeded or abused." Lewis Em. Dom., 566 (2d ed.).

The time when the work should be completed was limited to five years from the passage of this act by section 8 thereof.

In Illinois it was decided: "A corporation having such power must be permitted to judge for itself what amount of land is necessary for its purposes, subject to the authority resting in the courts to restrain any abuse of the power in that respect." *Schuster v. Sanitary Dist.*, 177 Ill., 627.

In *Atlantic Co. v. Penny*, 119 Ga., 482, the court said:

"The exact quantity of land that may be necessary for the construction and maintenance of stations, terminal facilities and the like can not be definitely fixed, even by prescribing a maximum amount, as in case of the right of way; and therefore the general assembly has prescribed that the company may acquire as much 'as may be necessary' for this purpose."

The Illinois court says: "The railroad is empowered to locate its line in its discretion and granted the right of eminent domain in acquiring its right of way. There is of necessity lodged in railway companies, to be exercised through their officers, a large discretion to determine within the statutory and constitutional limitations, the amount of land reasonably necessary for its corporate purposes, and in *Smith v. Chicago & Western Indiana Railroad Co.*, we said 'every company seeking to condemn land for public improvement must, in a modified degree, be permitted to judge for itself what amount is

necessary for such purposes." O'Hare v. C. M. R. R. Co., 139 Ill., 191.

And so where the railroad was authorized to acquire such land as may be necessary and the statute fixed a maximum limit of six rods for the roadbed, the court said whether the land taken was necessary was a matter to be determined by the company "within the limits of the right of way, six rods wide, as defined by the statute." McKennon v. St. Louis, I. M. & So. Rwy., 69 Ark., 108.

We think Congress in these railroad acts authorized the maximum, and the appellee was authorized to take the necessary land for freight facilities therefrom.

It appears by the appellee's answer that under the plans submitted and approved, the appellee will not occupy any property in the prescribed area north of the south line of Quincy street, while the appellant's property fronts on the south side of R street, which can not be closed.

It is apparent from the map of the plan of the appellee's tracks and freight yard that it would be impracticable for the appellee's tracks, even by the use of a very high degree curve, to be located on the appellant's lots, and their situation is too remote from the business section to suggest locating freight houses on the appellant's lots. These lots appear absolutely useless for freight terminal purposes. The petition of the appellant does not suggest that the lots are in any manner necessary for the freight facilities of the appellee, for which Congress made provision, and merely insists that by force of the proviso the appellee must be compelled to condemn her property, although her property is not within the location finally adopted by the appellee and approved by the Commissioners of the District.

When the power to exercise the right of eminent domain is delegated to a railway company, the courts will supervise the exercise of that power and restrain any clear case of abuse of the power. Should the courts be asked to compel the railroad to condemn property for which it finds no public use, and when it is plain the property is not needed? Can Congress require a railroad to condemn private property at some distance from its freight yard, which is in no sense necessary for the use of the railroad?

"Private property can not be taken for public use unless there is a necessity for such taking; for the taking of property when not at all necessary for a public purpose, or the taking of more property than is necessary for a given public purpose, is in effect a taking for private use. Randolph on Em. Dom., sec. 185." Atlantic Railroad Co. v. Penny, 119 Ga., 481.

"The adjudicated cases establish the proposition that while the courts have power to determine whether the use for which private property is authorized by the legislature to be taken, is in fact a public use, yet if this question is decided in the affirmative, the judicial function is exhausted; that the extent to which such property shall be taken for such use rests wholly in the legislative discretion, subject only to the restraint that just compensation must be made." Shoemaker v. United States, 147 U. S., 282, 298.

"It undoubtedly must rest as a general

rule," says Chancellor Kent (2d Com., 340), "in the wisdom of the legislature to determine when public uses require the assumption of private property; but if they should take for a purpose not of a public nature, as if the legislature should take the property of A, and give it to B, or if they should vacate a grant of property, or of a franchise, under the pretext of some public use or service, such cases would be gross abuses of their discretion and fraudulent attacks upon private right, and the law would clearly be unconstitutional and void." New Central Coal Co. v. George's Creek Coal and Iron Co., 37 Md., 560.

In our opinion, Congress, in these railroad acts here considered, determined the general line northward and southward, the location of the union station and substations, the freight yards and terminals, and gave the railroads, required to finish their several undertakings within five years, prescribed areas within which the companies for the several works and constructions might acquire by purchase or condemnation sufficient land to effectuate the objects of Congress. The grant of the right of condemnation obviously was given within the maximum limits.

Congress was mindful of the prohibition that "private property was in no case to be taken for private use," and therefore, within the maximum area for the freight yard and terminal of the appellee, it enacted that the appellee "may acquire by purchase or condemnation the land and property necessary for all the purposes contemplated."

We repeat, that the plans perfected and then submitted to the Commissioners of the District and approved by them, determined finally the limits of the land and property necessary to be taken by the appellee within the maximum limits wherein the appellee was to locate and whereon it did locate its freight yard and terminals. The second proviso of section 9 of the union station act is only for the benefit of a property owner whose land is included "*within such location*," and the compulsion upon the appellee to appropriate land within two years is granted to such property owner alone.

If we now held that the appellant could invoke the power of this proviso to compel the railroad to acquire the appellant's private property, not necessary for any public use whatever, we would sanction an abuse of the power of eminent domain. If the appellant now desired to restrain the appellee from condemning her lots, we should, in a proper way, forbid the appellee from such taking of private property for private use under the supposed sanction of this act of Congress.

In this instance, it is true, the appellant is willing the railroad should acquire her lots, but the process should be by purchase and not by condemnation. If, in such a case, she should be unwilling, should we not protect her property from condemnation when it was so plain that her lots were not necessary in any manner for any public use by the appellee, and should we not, for the same reason, prevent her from compelling the appellee to condemn her lots after the appellee has located its freight yard and terminal, and it happens that the lots of the appellant are not within such location?

We are not now speaking of a case of an adjacent property owner, nor considering that qualification of the right of eminent domain that compensation should be made for private property taken or sacrificed for public use, as in *Pumpelly v. Green Bay Co.*, 18 Wall., 166, or as in *Dana v. Railway Co.*, 7 App. Cas. D. C., 482; 24 Wash. Law Rep., 24.

If propinquity of freight yards and freight trains should so seriously injure the enjoyment of the appellant's lots and houses hereafter, she would, in a proper case, have the same remedy, at law or in equity, that others nearby could resort to. Such annoyance, however, common to the appellant and to the neighborhood, is not such a sacrifice of private property for public use as comes within the cases last stated.

In conclusion, the appellant has no right to compel the appellee to appropriate her land, and it becomes unnecessary to discuss whether mandamus would be an appropriate remedy in a case such as this. We decide the appellant has no right, and therefore has no remedy.

The order of the learned court below, overruling the demurrer and dismissing the petition of the relator, is affirmed with costs.

Affirmed.

### Supreme Court of the District of Columbia.

#### THE MONONGAHELA BRIDGE CO., A CORPORATION,

v.

#### WILLIAM H. TAFT, SECRETARY OF WAR.

#### EQUITY; INJUNCTION; ADEQUATE REMEDY AT LAW.

1. By the act of March 3, 1899, Congress authorized the Secretary of War to require that any bridge over a navigable stream which constituted an unreasonable obstruction to navigation be altered, and on failure of the owner to make such alteration, to notify the United States district attorney, to the end that criminal proceedings be taken. The act further imposed a penalty for failure to obey such order. Complainant company owned a bridge over the Monongahela river, and were ordered by the defendant, as Secretary of War, to alter the same. Alleging that the act in question was unconstitutional and void, complainant sued to enjoin the Secretary from enforcing his order and from notifying the United States attorney of its failure to obey it. *Held*, that, conceding the act in question to be unconstitutional, complainant had an adequate remedy at law by setting up the invalidity of the act in any proceeding brought to enforce the penalty for its failure to obey the order, and there was no ground for relief in equity by injunction.
2. An injunction will not be issued to restrain a criminal prosecution.
3. An order void on its face will not constitute a cloud on title.

In Equity, No. 25,810. Decided April 13, 1906.

HEARING on demurrer to a bill in equity for an injunction. Bill dismissed.

*Mr. Samuel Maddox and Messrs. Read, Smith, Shaw & Beal* for complainant.

*Mr. D. W. Baker and Mr. Jesse C. Adkins* for the defendant.

Mr. Justice STAFFORD delivered the opinion of the Court:

A rule was issued against the defendant to show cause why he should not be restrained from taking certain steps under the provisions of an act of Congress which the complainant

maintains is unconstitutional. The defendant filed an answer to the rule and likewise a demurrer to the bill itself. By reason of the view the court entertains it will not be necessary to take further notice of the answer, the questions presented by the demurrer being determinative. Accordingly, we shall treat the case as having been heard, for the purposes of the rule, upon the demurrer to the bill.

It appears that the complainant is a corporation by special act of the State of Pennsylvania. Under that act it constructed a bridge across the Monongahela River at Brownsville in that State, and has maintained it for many years. The bridge as constructed and maintained has a span between piers of two hundred (200) feet, and a clear, vertical space of forty-one and four-tenths (41.4) feet between the lowest timbers and the water. Congress, by an act approved March 3, 1899, provided that the Secretary of War, whenever he should have good reason to believe that any such bridge as the complainant's constituted an unreasonable obstruction to free navigation, might, after certain proceedings, require the alteration of the bridge within a stated time, and that if such alteration was not made within that time, he should notify the United States district attorney for the district where the bridge was located, to the end that criminal proceedings might be taken; that the owners or controllers of such a bridge, who so failed to obey the order of the Secretary should, on conviction, pay a fine not exceeding five thousand dollars (\$5,000); that every month's default should constitute a new offence; and that an appeal or writ of error should lie from the District or Circuit Court directly to the Supreme Court of the United States.

Proceeding under this act, the defendant notified the complainant that it must alter its bridge by making the vertical clear space at least fifty-two (52) feet, and the horizontal clear space three hundred and ninety (390) feet. The bill states that such changes would be so expensive that enforcement of the order would amount to a confiscation of the property.

In what is said hereafter it will be assumed for the purposes of this case that the act is unconstitutional and void, as insisted by the complainant. The question is, whether, even assuming that to be true, this court has jurisdiction to entertain the suit and grant the relief prayed for.

The complainant admits, of course, that no injunction will be issued to enjoin a criminal prosecution. In *re Sawyer*, 124 U. S., 200. But the complainant insists that its bill is not brought to enjoin a criminal prosecution, but rather to remove a cloud upon its title to the bridge, and upon its interest therein represented by its stock. It says that the order issued by the Secretary constitutes such a cloud, and prays that he be enjoined from attempting to enforce its terms, and that it be adjudged null and void. It also prays that he be restrained from notifying the United States district attorney for the western district of Pennsylvania, in which the bridge is located, of the existence of the order, or of the complainant's failure to comply therewith.

The question may be asked, whether notice from the Secretary to the district attorney is a

condition precedent to the institution of criminal proceedings? Is it or is it not a necessary preliminary step? If it is, then to enjoin the taking of that step would seem to be to enjoin the prosecution. But if it is not a necessary step—if the district attorney may proceed without such notice, and if a prosecution may be maintained without it upon mere proof that the order was made and has not been complied with—then of what avail would it be to enjoin the Secretary from giving the notice? Would it not be a vain and useless thing? Can it be that a court should enjoin the doing of an act which amounts to nothing more than the giving of a piece of information—information, too, which may be derived in other ways? The act itself does not provide that upon notice being given to the district attorney by the Secretary of War the prosecution shall be instituted. On the contrary, it declares that if the owners or controllers of the bridge shall fail to comply with the order of the Secretary, after notice thereof to them, they shall be punished, etc. The notice from the Secretary to the district attorney confers no right and imposes no liability.

Does the order constitute a cloud upon the complainant's title? The order is to be read in connection with the act under which it is made. The act, we are to assume, is utterly void on its face. Consequently, the order itself is void upon its face. Every one is presumed to know the law, and consequently every one will understand that the order is of no effect whatever. How, then, can it constitute a cloud upon the title? If the order was valid, of course it ought to be enforced, and the complainant could have no remedy. If it was invalid, but its invalidity depended upon matters of fact needing to be proved, then perhaps it might constitute a cloud which the complainant would have a right to have dispelled. What it amounts to is this: a direction to remove a certain structure as a nuisance to navigation, or to modify its shape and size so that the nuisance will be abated. Does such an order amount to a cloud upon the title when upon the fact of it the order is made without any authority in law?

The act does not pretend to authorize any one to alter the bridge for the owners; if they do not alter it the act declares that they shall be punishable by fine. It does not declare that the property itself shall be touched or interfered with. Of course, if the order were a valid one, or if it were not void upon its face, it would affect the value of the complainant's property, because property which one can not hold and control in its present condition without making himself liable to a fine is not as valuable as property which he can hold and own exempt from such conditions. But we are brought back each time to the same question, namely, whether a palpably void order is a cloud upon a title? That it is not, seems to be clear by all the authorities. *Pomeroy's Eq. Jur.*, 3d ed., sec. 1399, and note.

It is said in the complainant's brief that if the act of Congress and the order made in pursuance of it are valid, the parties navigating the river have a right to maintain a bill for the enforcement of the order, and that since such parties would have a right to resort to equity, it must follow that the complainant has the

same right. But what has been said before applies equally to this suggestion. A court of equity would not entertain a bill to enforce a void order any more than a court of law would sustain a criminal prosecution for disobeying a void order.

It is to be noted that the only means of enforcing the order is by a prosecution at law in the District or Circuit Court of the United States, from which an appeal is allowed directly to the Supreme Court, and that assuming the act to be void, such means of enforcing it must utterly fail. So that the situation may be stated thus: the court is asked to enjoin the defendant from notifying the district attorney that the complainant has failed to comply with the defendant's order to do something which the defendant had no right to require the complainant to do. And the reason given for asking it is that the district attorney may institute a prosecution against the complainant which can not possibly be maintained. To take jurisdiction in such a case would be to attempt to transfer the determination of the constitutional question from the court in which the criminal action would be brought to the equity court. Even that result would not be accomplished, and no other object can be conceived. It is not, and can not be, contended that any uncertainty in law touching the constitutionality of the act of Congress, if such uncertainty existed, would afford ground for relief in equity. Moreover, the bill proceeds upon the theory that no such uncertainty exists.

If the act of Congress pretended to authorize the defendant to remove or alter the bridge, and he were about to do so, a different case would be presented. But now the only means of enforcing obedience to the order is a legal proceeding in which the validity of the order can be challenged as effectively as it can be here. In such cases the property owner is amply protected at law without the aid of equity. *Fitts v. McGhee*, 172 U. S., 516.

Accordingly the rule will be discharged.

#### RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

#### Legal Notices.

##### FIRST INSERTION.

John Ridout, Attorney  
In the Supreme Court of the District of Columbia.  
*The Alcott-Ross Company, a Corporation, Plaintiff, v. Williamson and Libbey Lumber Company, a Corporation, Defendant.* At Law, No. 48,400.

The object of this suit is to recover the sum of \$1,728.56 against the defendant for breach of contract, and to have judgment of condemnation of certain credits of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 25th day of April, 1908, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in

[Seal] case of default. By the Court: WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. 18-81

**Legal Notices.****W. H. Sholls, Attorney**

**In the Supreme Court of the District of Columbia.**  
**Katharina Herrmann v. The Unknown Heirs, Allenees, and Devisees of John Harrison et al.** Equity No. 28,208.

The object of this suit is to perfect the title of the complainant to that part of original lots 10 and 11, in square 877, in the city of Washington, District of Columbia, described as follows: Beginning at the southeast corner of said original lot 10 and running thence west 8 feet, thence north 98 feet 8 inches, thence east 25 feet to a public alley, thence south, on the line of said alley, 8 feet 10 inches, thence west 7 feet, thence south 18 feet to lot 9, thence west 15 feet to the intersection of the dividing line between lots 9 and 11, and thence south 66 feet 8 inches to the place of beginning. On motion of the complainant it is this 2d day of May, A. D. 1906, ordered that the defendants, the unknown heirs, devisees, and allenees of John Harrison, deceased, and the unknown heirs, allenees, and devisees of Albert B. Norton, trustee, deceased, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of forty days from the first publication of this order, good cause therefor having been shown to the satisfaction of the court; otherwise this cause will be proceeded with as in case of default; provided a copy of this order be published in the Washington Law Reporter once a week for three

[Seal] successive weeks before said return day.  
**WENDELL P. STAFFORD, Justice.** A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 18-3t

**M. J. Keane, Solicitor**

**In the Supreme Court of the District of Columbia,**  
**Holding Equity Court.**  
**Michael McDonnell, Complainant, v. The Unknown Heirs, Allenees, and Devisees of William Wham, William Stewart, John Ridgeway, Defendants.** In Equity, No. 25,721.

The object of this suit is to declare the title to lots 18, 14, 16, 18, 19, 20, and 21 of Brawnner's subdivision of original lots 17 and 18, in square 1277, as the same is known and described on the ground plan of plat of city of Washington, District of Columbia, to be good in fee simple in the complainant by adverse possession. On motion of the complainant, by Michael J. Keane, his solicitor, it is, this 10th day of November, 1905, ordered that the defendants, the unknown heirs, allenees, and devisees of William Wham, William Stewart, and John Ridgeway, and each of them, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of the period of publication hereinafter described; otherwise this cause will be proceeded with as in case of default. Good cause having been shown, it is not necessary that this order should be published for a longer period than herein required. This order shall be published in The Law Reporter and The Washington Post once a week for four successive weeks before the first rule day occurring after

[Seal] the day of the first publication. **THOS. H. ANDERSON, Justice.** A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 18-4t

**Gordon & Gordon, Attorneys**

**In the Supreme Court of the District of Columbia.**  
**Edward Shoemaker v. William L. Shoemaker et al.** Equity, No. 24,990. Docket 55.

The object of this bill is to make sale of the tract of ground, in the District of Columbia, known as the "Quaker Burying Ground," and distribute the proceeds amongst the heirs of Jonathan Shoemaker, deceased. On motion of the complainant, it is this 2d day of May, 1906, ordered that the defendants, Julian Shoemaker, Caroline Jack, George A. Shoemaker, Adeline Shoemaker, Rachel Shoemaker, Ellen Lukens, H. Frank Davis, A. B. Davis, Charles G. Davis, John M. Davis, Samuel H. Davis, and Isaac L. Holmes, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star prior to said return day.

[Seal] **HARRY M. CLABAUGH, Chief Justice.** A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 18-3t

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**Legal Notices.****Thos. Walker, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of George W. Morgan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of April, 1906. **MARY E. MORGAN, 600 2d st. S. W.** Attest: **WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 18,508. Administration. [Seal.] 18-3t

**Lambert & Baker, Attorneys**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Bridget Gleason, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of April, 1906. **WILTON J. LAMBERT, 410 5th st. N. W.** Attest: **WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 9890. Administration. [Seal.] 18-3t

**John J. Brosnan, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Ellen Crumly, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of May, 1906. **JOHN H. BRADLEY, 443 7th st. S. W.** Attest: **WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 18,619. Administration. [Seal.] 18-3t

**Alex. H. Bell, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Katharine B. Sullivan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 30th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 30th day of April, 1906. **JOHN J. SULLIVAN, 87 N. Y. ave.; DANIEL F. SULLIVAN, 1400 N. Cap. st.** Attest: **WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 18,617. Administration. [Seal.] 18-3t

**Wilson & Barksdale and Burton Macafee, Attorneys**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Ann E. Comtes, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 1st day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 1st day of May, 1906. **ANNIE C. GUTHRIE, 1215 S. st. N. W.; MARY TERESA SPALDING, 2907 O st. N. W.** Attest: **WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 11,532. Administration. [Seal.] 18-3t

**Legal Notices.**

[Filed May 2, 1906. J. R. Young, Clerk.]

**Arthur G. Bishop, Joseph N. Saunders, Attorneys**  
**In the Supreme Court of the District of Columbia.**  
**Terrence J. McMahon v. John Sayle.**  
 Equity 26,199. Doc. 58.

The object of this suit is to perfect complainant's title to the west 27 feet front on F street by the full depth thereof of original lot five (5), in square one hundred and three (103), in the city of Washington, D. C. On motion of complainant, by Bishop and Saunders, his solicitors, it is, this 2d day of May, 1906, ordered that the defendant and his unknown heirs, devisees, and assignees, if he be dead, cause his or their appearance to be entered herein on or before the first rule day occurring after the expiration of forty days, exclusive of Sundays and legal holidays, from the date of the first publication of this order; otherwise this cause will be proceeded with as in case of default. This order shall be published in The Washington Law Reporter and The Washington Post once a week for four successive weeks before said return day, sufficient cause having been shown for dispensing with a longer period of publication.

[Seal] By the Court: **WENDELL P. STAFFORD**, Justice. A true copy. Test: J. R. Young, Clerk, by W. E. Williams, Asst. Clerk. 18-4t

**Henry S. Matthews, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia and the State of Pennsylvania, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Louis Mackall**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 30th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 30th day of April, 1906. **LOUIS MACKALL, JR.**, 3044 O St. N. W.; **EDWARD J. WELD**, Meyersdale, Pa. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,635. Administration. [Seal.] 18-3t

**E. H. Thomas, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**In re Estate of Reuben B. Detrick, Deceased.**  
 Adm. No. 12,549.

The executor and trustee having reported that he has sold premises Nos. 408 and 410 N street northwest, being lots numbered eighty-five (85) and eighty-six (86), in Bryant's subdivision of lots in square numbered five hundred and thirteen (513), in the City of Washington, District of Columbia, to E. C. Catts Company, Incorporated, for the sum of six thousand one hundred (\$6,100) dollars, net cash, it is, by the court, this 1st day of May, A. D. 1906, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 1st day of June, 1906. Provided a copy of this order be published in The Washington

[Seal] Law Reporter once a week for each of three successive weeks before said last named day. **WENDELL P. STAFFORD**, Justice. A true copy. Attest: **Wm. C. Taylor**, Deputy Register of Wills. 18-3t

**SECOND INSERTION.**

**Campbell Carrington, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Martha M. Proctor, Complainant, v. Montague Proctor,**  
**Defendant; Clara Bailey, Co-Respondent. No.**  
**25,858. Equity Docket No. 57.**

The object of this suit is to obtain an absolute divorce upon the ground of adultery. Provided a copy of this order be published once each week for three successive weeks in The Washington Law Reporter and The Washington Times. On motion of the complainant, by her solicitor, Campbell Carrington, it is this 25th day of April, A. D. 1906, ordered that the defendants, **Montague Proctor** and **Clara Bailey**, cause their appearances to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default.

[Seal] By the court: **HARRY M. CLABAUGH**, Chief Justice. True copy. Test: **John R. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. 17-3t

**Legal Notices.**

**Burton T. Doyle, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Justina Lauer**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 20th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 20th day of April, 1906. **BURTON T. DOYLE**, 622 F st. N. W.; **WILLIAM P. C. HAZEN**, 511 E. Cap. st. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,610. Administration. [Seal.] 17-3t

**W. F. Mattingly, R. Ross Perry & Son, and John B. Lerner, Solicitors**

**In the Supreme Court of the District of Columbia.**  
**Kate Willard Boyd et al. vs. Joseph Parker Camp.**  
 No. 25,974. Equity Docket No. 57.

The object of this suit is to quiet the title in the complainants to original lot numbered twenty (20) in square numbered two hundred and fifty-four (254), in the city of Washington, D. C. On motion of the complainants, it is this 24th day of April, A. D. 1906, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter; otherwise the cause will be proceeded with as in case of default. By the

[Seal] court: **HARRY M. CLABAUGH**, Chief Justice. True copy. Test: **John R. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. 17-3t

**Jos. A. Burkart, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Nellie McLaughlin, Deceased.**  
 No. 13,559. Administration Docket —.

Application having been made herein for letters of administration on said estate by **Joseph McLaughlin** that said letters issue to **Amandus F. Jorss**, it is ordered, this 23d day of April, A. D. 1906, that **David B. McLaughlin**, **Charles L. Du Rocher**, **Mary M. McLaughlin**, **Ernest Salomon**, **Hazel McLaughlin**, and **Francis Clarke**, and all others concerned, appear in said court on Monday, the 28th day of May, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return

[Seal] day. **WENDELL P. STAFFORD**, Justice. Attest: **Wm. C. Taylor**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 17-3t

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, which was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Alice Key Browne**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Tuesday, the 15th day of May, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies, or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 20th day of April, 1906. **THE NATIONAL SAFE DEPOSIT, SAVINGS AND TRUST COMPANY OF THE DISTRICT OF COLUMBIA**, by **William D. Hoover**, Second Vice-President. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,811. Administration. [Seal.] 17-3t

The Law Reporter Printing Company's office is now the cleanest, most comfortable and best conducted one in the city of Washington, having a head for every department of the business. It will be kept so, in order that the public may be expeditiously served.



**Legal Notices.**

**Walter C. Balderston, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John W. Fawcett, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of April, 1906. ANNA V. FAWCETT, 1327 G st. N. W. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,622. Administration. [Seal.] 17-31

**Joseph R. Fague, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Jonathan Hamilton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of April, 1906. SAMUEL M. TYLER, 1524 5th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,503. Administration. [Seal.] 17-31

**Wilson & Barksdale, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Kate Ross, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of April, 1906. FRANK E. GIBSON, 929 1st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,244. Administration. [Seal.] 17-31

**Wilson & Barksdale, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Charles H. Smith, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of April, 1906. DAVID W. SHELLAND, Worcester, N. Y. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,385. Administration. [Seal.] 17-31

**J. S. Easby-Smith, Attorney**  
**In the Supreme Court of the District of Columbia.**  
**Grayson L. Thornton, Plaintiff, v. Claude G. Stephenson and Harry L. Wheatley, Defendants.**  
**At Law, No. 48,418.**

The object of this suit is to recover four hundred and twenty-five dollars upon three certain promissory notes and to have judgment of condemnation of certain property of the defendant, Claude G. Stephenson, levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, ordered, this 20th day of April, 1906, that the defendant, Claude G. Stephenson, appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be prosecuted as in case of default. By the Court: WRIGHT, Justice. Test: John E. Young, Clerk. 17-31

**Legal Notices.**

**R. Ross Perry and Son, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the State of Illinois, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William Hall Forsy Blodgett, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of April, 1906. WILLIAM B. COLT, 452 Federal Bldg., Chicago, Ill. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,624. Administration. [Seal.] 17-31

**THIRD INSERTION.**

**M. F. Mangan, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Julius E. Juenemann, late of the State of Maryland, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of April, 1906. JOHANNES W. JUENEMANN, Ardwick, Md. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,499. Administration. [Seal.] 16-31

**Wm. A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of John H. Elliott, Deceased.**  
**No. 13,438. Administration Docket —**  
 Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by the American Security and Trust Company, the executor in said will named, it is ordered this 18th day of April, A. D. 1906, that Middleton S. Elliott, Charles P. Elliott and Rosa Elliott, and all others concerned, appear in said court on Tuesday, the 22d day of May, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in the Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day.  
 [Seal] WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 16-31

**William B. Reilly, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Robert L. Beatty, Deceased.**  
**No. 13,600. Administration Docket —**  
 Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration cum testamento annexo on said estate, by Richard Murphy, it is ordered this 18th day of April, A. D. 1906, that notice is hereby given to Tracy Beatty, a brother, and the unknown heirs of Charles Beatty, deceased, the heirs at law and next of kin of Robert L. Beatty, deceased, and all others concerned, appear in said court on Tuesday, the 22d day of May, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Post, once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 16-31

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W.



**Legal Notices.****Hamilton & Colbert, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.****Estate of David Murphy, Deceased.**  
**No. 13,571. Administration Docket 85.**

Application having been made herein for probate of the last will and testament and a codicil thereto of said deceased, and for letters testamentary on said estate, by Michael J. Colbert and James F. Shea, named as executors in said last will and testament, it is ordered, this 18th day of April, A. D. 1906, that John Murphy, Mary McPartland, Ellen Murphy, John Murphy, Jr., James Murphy, John Murphy, son of Patrick, Mary Ann Beach, and all others concerned, appear in said court on Friday, the 1st day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] (Signed) WENDELL P. STAFFORD, Justice.  
Attest: Wm. C. Taylor, Deputy Register of  
Wills for the District of Columbia, Clerk of the Probate Court. 16-3t

**Hamilton & Colbert, Attorneys**

**In the Supreme Court of the District of Columbia.**  
**The Baltimore and Ohio Railroad Company v. Richard E. Simmes, the Unknown Heirs, Allenees, and Devises of Richard E. Simmes. Equity. No. 26,049.**

The object of this suit is to declare the title of the complainant to the real estate situate in the city of Washington, District of Columbia, known as all of original lot numbered fourteen (14) in square numbered six hundred and eighty-one (681), except so much of said lot as was conveyed to the Baltimore and Ohio Railroad Company by Nicholas Acker and wife, by deed dated September 12, 1873, and recorded September 20, 1873, in liber 728, folio 463, of the land records of the District of Columbia, to be good in fee simple, by reason of adverse possession, and to declare the title of complainant to be good in it of record, and to perpetually enjoin the defendants from asserting any title to said real estate. On motion of the complainant, by its solicitors, Hamilton & Colbert, it is, by the court, this 16th day of April, A. D. 1906, ordered that the defendants, Richard E. Simmes, and the unknown heirs, allenees, and devisees of said Richard E. Simmes, cause their appearance to be entered herein on or before the first rule day occurring after the fortieth day, exclusive of Sundays and legal holidays, after the date of the first publication of this order; otherwise this cause will be proceeded with as in case of default. The court is satisfied, upon good cause shown, as appears by the affidavit filed herein, that it is not necessary that this order should be published at least twice a month during the period of not less than three months. This order shall be published at least once a week for four successive weeks before said return day; provided that said order shall be published twice a month in the month of April, 1906, and twice a month in the month of May, 1906. This order shall be published in The Washington Law Reporter, the court not deeming it necessary that the same should be published in any other paper, and no other paper having been selected by the parties. WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 16-4t

**Hamilton & Colbert, Attorneys****Supreme Court of the District of Columbia,**  
**Holding Probate Court.****Estate of Henry Kraak, Deceased.**  
**No. 18,580. Administration Docket —.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Union Trust Company of the District of Columbia and Henry C. Kraak, the executors named in said will, it is ordered this 17th day of April, A. D. 1906, that Wilhelmmina Howard and Florence Marie Irving, and all others concerned, appear in said court on Tuesday, the 22d day of May, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day.

[Seal] return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 16-3t

**Legal Notices.****E. S. Mussey, Attorney****Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Mary Emily Bates Cones, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 12th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 18th day of April, 1906. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary; ELLEN S. MUSSEY, 416 Fifth St. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,514. Administration. [Seal.] 16-3t

**Wm. A. McKenney, Attorney****Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary M. B. Whitman, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of April, 1906. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,554. Administration. [Seal.] 16-3t

**J. J. Hamilton and Lawrence Hufty, Solicitors****In the Supreme Court of the District of Columbia.**

**John J. Hamilton and Lawrence Hufty, Collectors, etc., vs. John C. Regan et al. No. 26,073. Equity Docket No. —.**

The object of this suit is to obtain a decree for the possession of a sum of money now held by the Treasurer of the United States as Commissioner of the Sinking Fund of the District of Columbia, amounting to about \$3,674.75, and being a portion of the retain due J. C. Regan & Co., under contract No. 2754, which was entered into by said Regan & Co. with the District of Columbia for the construction of the Brightwood reservoir. Provided a copy of this order be published once a week for three successive weeks before said return day in The Washington Law Reporter and The Washington Post. On motion of the complainants, it is this 17th day of April, A. D. 1906, ordered that the defendants, John C. Regan and Dominic E. Regan, trading as J. C. Regan & Co., cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the court: WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 16-3t

**Wm A. McKenney, Attorney****Supreme Court of the District of Columbia,**  
**Holding Probate Court.****Estate of Lawrence P. Graham, Deceased.**  
**No. 18,553. Administration Docket —.**

Application having been made herein for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by the American Security and Trust Company, the executor named in said will, it is ordered this 16th day of April, A. D. 1906, that Thomas Peyton Gwynne, Worth Odgen Gwynne, Frederick Key Gwynne, Lizzie Peyton Robinson, Campbell Lawson, Thomas Lawson, William Lawson, Jennie G. George, Lawrence P. Graham, James Duncan Graham, — White, Bessie White Watson, and all others concerned, appear in said court on Tuesday, the 22d day of May, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day.

[Seal] WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 16-3t

**Legal Notices.**

**Alexander H. Bell, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Daniel McNamara, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of April, 1906. **MARY C. McNAMARA**, 582 8th st. S. E. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,548. Admn. [Seal.] 16-3t

**Thos. Walker, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Nellie Tyler, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of April, 1906. **WILLIAM D. JARVIS**, 120 D st. S. W. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,108. Administration. [Seal.] 16-3t

**Hamilton & Colbert, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Francis H. Hill, Deceased.**  
 No. 13,485. Administration Docket 34.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by George E. Hamilton, the executor named in said will, it is ordered this 6th day of April, A. D. 1906, that Mary Heaster Sterrett, Eleanor Blunt, Mary H. Bryan, Henrietta Willson, Nannie Willson, Emma Sutton, Alice Willson, Nannie Hamilton, Elizabeth Camp, Georgie Wallace, James B. Willson, Francis Willson, Hayward Willson, Frederick Willson, Martha Neale Willson, Mrs. Horace Willson, Carroll W. Willson, Neale W. Willson, and the unknown heirs at law of Francis H. Hill, deceased, and all others concerned, appear in said court on Tuesday, the 22d day of May, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **WENDELL F. STAFFORD**, Justice. Attest: **M. J. Griffith**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 16-3t

[Filed March 30, 1906. J. R. Young, Clerk.]

**Gordon & Gordon, Attorneys**  
**In the Supreme Court of the District of Columbia.**  
**William Wheatley et al. vs. Marion W. McCullough et al.** Equity, No. 22,775. Doc. 50.

The trustees herein having reported an offer from the Columbia National Sand Dredging Company to purchase parts of square eleven hundred and seventy-three (1173) in the city of Washington, District of Columbia, fronting about one hundred and twenty-eight feet eight inches (128 ft. 8 in.) on the south side of Water (K) street northwest, and running back to the channel of the Potomac River, for the sum of fifty thousand (\$50,000) dollars, all cash or one-third cash, balance in one, two, and three years, in equal instalments, with five per cent interest, payable semi-annually, subject to the payment of a brokerage commission of one thousand (\$1,000) dollars; it is, this 30th day of March, A. D. 1906, ordered that said offer be accepted and sale made thereunder be ratified and confirmed, unless cause to the contrary be shown on or before the 30th day of April, 1906. Provided a copy of this order be published in The Washington Law Reporter once each of three successive weeks before said last named day. **HARRY M. CLABAUGH**, Chief Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 16-3t

**Legal Notices.**

**W. Mosby Williams, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Frances L. Robinson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of April, 1906. **THOMAS P. WOODWARD**, 610 18th st. N. W. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,582. Administration. [Seal.] 16-3t

**Lester & Price, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the State of Maryland and the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Mary Schwakoff, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 18th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 18th day of April, 1906. **CHARLES B. MEYD**, Frederick and Athol aves., Balto., Md.; **GEORGE SCHWAKOFF**, 811 11th st. N. W. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,602. Administration. [Seal.] 16-3t

**Win. A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Samuel P. Langley, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of April, 1906. **AMERICAN SECURITY AND TRUST COMPANY**, by James F. Hood, Secretary. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,550. Administration. [Seal.] 16-3t

**SIXTH INSERTION.**

**T. Percy Myers and Benjamin S. Minor, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Tillotson E. Brown, Complainant, v. the Unknown Heirs, Alliances, and Devisees of William B. Hurst, Deceased, Defendants.** In Equity, No. 25,954.

The object of this suit is to establish title by adverse possession of the complainant to part of lot numbered one (1) in square numbered three hundred and ninety-seven (397), to wit: Beginning at a point on Eighth street northwest, twenty-nine (29) feet and two (2) inches north of the southeast corner of lot numbered one (1) in square numbered three hundred and ninety-seven, and running thence north along said Eighth street thirteen (13) feet and eleven (11) inches, thence west ninety-nine (99) feet and four (4) inches, thence south thirteen (13) feet and eleven (11) inches, thence east ninety-nine (99) feet and four (4) inches, to the place of beginning. On motion of the complainant, by his solicitor, it is, by the court, this 8th day of February, A. D. 1906, ordered that the defendants, the unknown heirs, alliances, and devisees of William B. Hurst, deceased, cause their appearance to be entered herein on or before the first rule day occurring after three months from the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published for three months, once a week for three successive weeks for the first month, and twice a month for each of the two succeeding months, in The Washington Law Reporter and The Washington Post. **WENDELL F. STAFFORD**, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. feb 16, 23; mar 2; apr 6, 13, may 4, 11

# The Washington Law Reporter

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### Appeals from Justices of the Peace.

Two decisions recently rendered have important bearing upon the question of appeals from justices of the peace.

In the case of Dowling v. Buckey, decided by the Court of Appeals, it is held that in case of an appeal by the defendant in a landlord and tenant proceeding, two or more sureties upon his undertaking are required by section 1233 of the Code in order for the same to operate as a supersedeas. That section, however, it is held, by fair implication authorizes an appeal without the giving of a supersedeas bond; and an undertaking with but one surety thereon, while not sufficient as a supersedeas bond, is held sufficient as an ordinary appeal bond, and an order dismissing the appeal is reversed. A holding of especial interest is that in which the court construes section 31 of the Code, which provides for the undertaking to be given on appeal from a justice of the peace, as requiring that such undertaking shall be in effect a supersedeas and that it must be executed by at least two sureties. The practice in such cases has in general been to have but a single surety upon such undertakings.

The opinion by Mr. Justice Duell is reported in this issue.

The other case is that of Davidson v. Mitchell, decided by the Supreme Court of the District,

and in which Mr. Justice Barnard, delivering the opinion of the court, distinguishes between the undertaking on appeal in ordinary cases, provided for by section 31 of the Code, and the appeal bond required by section 35 of the Code in case of an appeal from a judgment of a justice of the peace on a trial of right of property; and holds that the giving of an undertaking as provided by the former section is not sufficient to give the court jurisdiction to entertain an appeal from a judgment on trial of right of property. It will be reported in our next issue.

### Stockbroker and Customer—Fictitious Transactions.

In the case of William O. Haight v. Haight & Freese Company, decided by the appellate division of the Supreme Court of New York in April, 1906, and reported in the New York Law Journal, it is held that the relation between a stockbroker and customer is a fiduciary one, and an action will lie by the customer against the stockbroker for an accounting. In such an action the broker may be required by a court of equity to account for the money received by him, and as to the disposition he has made of it. Where, upon such accounting, it appears that no actual purchase or sale of any stock was made by the broker on behalf of the customer, but that there were merely bookkeeping entries, whereby alleged orders of purchase and sale by various customers of the broker were offset against one another, accounts rendered by the broker to the customer purporting to show purchases and sales of stock on behalf of the latter are false and fraudulent, and are insufficient to bind the customer.

It appeared that on the back of written orders given to the broker for the purchase and sale of stocks was a printed agreement which, amongst other things, provided that the order might be executed in any city or place, either on any exchange or by private sale, as the broker might elect, and that any other customer of the broker might be the purchaser or seller, but that the broker was not to be obliged to disclose the name of any customer in any event. It was held that, assuming that such agreement was valid and enforceable, nevertheless actual transactions were contemplated, and it would be necessary for the broker to show real purchases and sales thereunder. Mere bookkeeping entries, charging up orders of other customers for the sale of securities, or orders of other customers for the purchase of them, would not, even under such an agreement, constitute transactions properly chargeable against the customer.

## Court of Appeals of the District of Columbia.

ALBERT DOWLING, APPELLANT,

v.

THOMAS W. BUCKEY.

APPEAL; LANDLORD AND TENANT PROCEEDING; UNDERTAKING ON APPEAL; SUPERSEDEAS; APPEAL BOND.

1. Under section 1233 of the Code, in case of an appeal by the defendant in a landlord and tenant proceeding, two or more sureties are required on the undertaking given by him in order for the same to operate as a supersedeas.
2. That section, however, by fair implication, authorizes an appeal without the necessity of giving an undertaking that shall act as a supersedeas; and an undertaking with but one surety thereon, while not sufficient as a supersedeas bond, is sufficient as an ordinary appeal bond, and in such case the dismissal of the appeal for failure to give a supersedeas bond is error.

No. 1622. Decided March 7, 1906.

APPEAL from an order of the Supreme Court of the District of Columbia, at Law, No. 47,900, dismissing an appeal from a justice of the peace. Reversed.

*Mr. A. A. Lipscomb* and *Mr. W. M. Ellison* for the appellant.

*Mr. J. D. Wright* and *Mr. W. R. Andrews* for the appellee.

*Mr. Justice DUELL* delivered the opinion of the Court:

It appears that heretofore the appellee brought suit before a justice of the peace to recover certain premises occupied by appellant and located in the city of Washington, District of Columbia. Trial was had and judgment rendered against appellant for possession and costs. From that judgment an appeal was noted to the Supreme Court of this District. For the purpose of perfecting the appeal an undertaking, with one surety, was submitted to the justice, who approved and accepted it. The record being transmitted to the Supreme Court, appellee moved that court to dismiss the appeal on the ground that the undertaking given on appeal was insufficient, and not in accordance with law because it was entered into by but one surety. The motion was granted and an order entered dismissing the appeal, with costs, and the papers remanded to the justice of the peace who heard the case, with directions to proceed thereunder according to law. From that order this appeal was taken.

The sole question presented for our determination is whether the undertaking thus entered into by this appellant and one surety, is a sufficient undertaking to sustain the appeal to the Supreme Court of the District of Columbia.

While several questions were presented on the argument, and are set out in the briefs filed on behalf of the parties, it will be necessary to consider but one. It is this: Will an appeal lie to the Supreme Court of the District of Columbia where judgment has been rendered by a justice of the peace in such District, in favor of the plaintiff, in an ordinary landlord and tenant case, without the giving of a supersedeas bond? It is conceded by appellant that the undertaking given in this case is insufficient to act as a supersedeas bond in the light of section

1233 of the District Code. If it be found that a supersedeas bond is not requisite and essential to such an appeal, the authorities relied upon by appellant are sufficient to sustain his proposition that a bond, though in form a supersedeas bond, but insufficient as such, if sufficient as a cost bond will support the jurisdiction of the court. There can be no doubt but that the undertaking given by appellant is sufficient as a cost bond. If such a bond is sufficient in a case like that at bar, then we are of opinion that the undertaking given was sufficient to perfect the appeal from the justice of the peace. *Oyc. of Law and Procedure*, vol. 2, p. 836 "c;" *L. J. Meister & Co. v. Chevalier Pavement Co.*, 108 La., 562; *Zapp v. Michaels*, 56 Texas, 395.

In form the undertaking given by appellant is a supersedeas bond and closely follows the requirements of such undertakings as set out in section 1233 of the Code. It was intended to act as a supersedeas, and it would seem that an appeal by a defendant in a landlord and tenant case would seldom be of substantial value if the statu quo was not preserved pending the appeal. However, intention and presumption are not sufficient in cases of this nature to warrant a finding that an undertaking must be one sufficient to stay the proceedings in the court where the case was originally brought.

Appellee insists that no appeal is permitted from a justice of the peace to the Supreme Court of the District in a landlord and tenant case unless a supersedeas bond be given, and that the Code provides that such a bond must be executed by the principal and two sureties.

Upon examination of the Code we find in two different parts thereof that justices of the peace are given jurisdiction of this class of cases. Section 20 of the District Code provides that, "whenever any tenant shall unlawfully detain possession of the property leased to him, after his tenancy shall have expired, it shall be lawful for any justice of the peace . . . to issue a summons to the party complained of to appear and show cause why judgment should not be given against him for the restitution of the possession."

An appeal is provided to the Supreme Court of the District by section 30, "in actions for the possession of real estate as aforesaid." Section 31 relates to the undertaking to be given. So far as it bears upon the question here at issue, it reads:

"No appeal shall be allowed unless the appellant, with sufficient surety, approved by the justice, shall enter into an undertaking to satisfy and pay whatever final judgment may be recovered in the appellate court, and agree that such judgment may be entered against principal and sureties."

This provision requires that the undertaking shall be in effect a supersedeas bond and that it must be executed by at least two sureties. True, the phrase "sufficient surety" is employed, but surety as there used does not refer so much to the person giving the undertaking as it does to the security, and that appears more clearly in the latter part of the section which says that the undertaking must provide that any final judgment may be entered against principal and sureties.

Were these the only sections applicable, the

appellee's contention would be correct. We find, however, that a subsequent chapter, thirty-nine of the Code (embracing sections 1218 to 1236, inclusive), relates entirely to landlord and tenant proceedings. Section 1232 provides for an appeal by either party against whom judgment is rendered by the justice of the peace before whom the case is tried. Section 1233 sets forth the requirements of the undertaking and says:

"In case of an appeal by the defendant, his undertaking, *in order to operate as a supersedeas*, shall be an undertaking to abide by and pay the judgment rendered by the justice of the peace, if it shall be affirmed, together with the costs of the appeal, and to pay all intervening damages to the leased property and compensation for the use and occupation thereof from the date of the judgment appealed from to the date of its affirmance; and in said undertaking *the said defendant and his sureties*, the latter submitting themselves to the jurisdiction of the court, shall agree that if the judgment be affirmed judgment may be rendered against them by the appellate court for the amount of the judgment so affirmed and the intervening damages, compensation, and costs aforesaid."

This clearly requires two or more sureties, if the undertaking is to operate as a supersedeas, and, to our minds, by fair implication, it permits an appeal without the necessity of giving an undertaking that shall act as a supersedeas. In *Brown v. Slater*, 23 App. D. C., 51, 56: 32 Wash. Law Rep., 18, we said: "But the proceedings on appeal in cases of forcible entry and detainer, which are regulated by secs. 1232 and 1233 of the Code, are different from those which govern appeals in ordinary cases. These latter are regulated by secs. 30, 31 of the Code." If sections 1232 and 1233 govern, as has been held, then appellee's contention is not well founded, for, as we have said, the Code, as we construe it, permits an appeal to be taken by the defendant in these proceedings without giving a supersedeas bond. In this respect it differs from the act of 1791, which first gave an appeal in such proceedings as we have now under consideration. The same is true as to section 687, R. S. of the District of Columbia, and of section 1028 of the R. S. of the District of Columbia. All these required an undertaking in the nature of a supersedeas bond. The defendant, as a condition of appeal, had to give such a bond. This was the holding in *Grady v. Bundy*, 22 W. L. R., 704. But that case is not an authority in point, because the Code has changed the statute. Such change does not relate to the requirement of the bond as to the sureties, but in permitting an appeal without the requirement of a supersedeas bond. There is no sufficient reason why an appeal should not be permitted a defendant without the requirement of such an undertaking. Rarely would a defendant care to appeal if he were ousted from the premises pending the appeal. Cases may, however, arise where an appeal without a stay might be of substantial value to the defendant. He might be the lessee for a long term of a large building, all or portions of which he sublet. Circumstances might be such that it would be impossible for him to give the stay bond that would be required. The justice of the peace may have clearly erred. It

would deprive the lessee of a substantial right to forbid an appeal without a supersedeas undertaking. Congress doubtless thought that similar cases might arise, and by the language employed meant to provide for such cases.

We consider the undertaking sufficient as an ordinary appeal bond, and, concluding that the Code does not require that the defendant in a landlord and tenant case should give a supersedeas bond in order to entitle him to an appeal, we think the court below was in error in dismissing the appeal.

It follows that the order dismissing the appeal must be reversed, with costs, and the case remanded to the court below, with directions to reinstate the appeal. And it is so ordered.

Reversed.

OSCAR J. RICKETTS, APPELLANT,

v.

THE SUN PRINTING AND PUBLISHING ASSOCIATION.

FOREIGN CORPORATIONS; SERVICE OF PROCESS ON AGENT OR PERSON CONDUCTING ITS BUSINESS.

1. Defendant, a foreign corporation, publishing a daily newspaper in the city of New York, also carried on the business of a press association, consisting in furnishing, for an agreed compensation paid direct to its central office in New York, its news reports to other papers throughout the country. It maintained a permanent office in this District with a large force of employees. The manager of the office, who was also its Washington correspondent, made direct delivery of copies of news reports collected by him to certain papers contracting with defendant for the service, the cost of making the copies being paid to him and used in part payment of the expenses of the local office. Held, that the corporation was "doing business in this District," within the meaning of section 1587, Code D. C., and that in an action against the corporation for libel, service of process on the manager of the local office was effectual to bring the defendant before the court.
2. Whether or not such manager is to be regarded as the agent of the defendant corporation is immaterial; he was at least conducting the business which the defendant was doing in this District.
3. Whether, in respect merely of its business of publishing a newspaper, the defendant, by maintaining an office in this District in charge of an employee whose duty it was to gather news and transmit it to defendant in New York for use in its publication there, was doing business in this District, not determined.

No. 1589. Decided March 7, 1906.

APPEAL by plaintiff from an order of the Supreme Court of the District of Columbia, at Law, No. 47,271, vacating the service of a summons in an action for libel. Reversed.

Mr. D. W. Baker, Mr. F. J. Hogan, and Mr. John M. Thurston for the appellant.

Mr. A. S. Worthington and Mr. Charles L. Frailey for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

The appellant, as plaintiff, brought this action in the Supreme Court of the District against the appellee, The Sun Printing and Publishing Association, to recover damages for the alleged publication of a libel in the New York Sun, a newspaper published by said association in the city of New York.

The defendant is alleged to be a corporation duly incorporated under the laws of the State of New York, having an office and doing busi-

ness in the District of Columbia. The summons, regularly issued, was returned by the marshal as served "on Richard V. Oulahan, correspondent of defendant, at No. 1417 G street N. W., the principal office of defendant in the District of Columbia, the 26th day of October, 1904."

Defendant appeared specially for the purpose of presenting a motion to vacate the aforesaid return. This motion, supported by affidavit, set up the facts that defendant was a foreign corporation; that it was not, and is not, doing business in the District; that it had no place of business or resident agent in said District, and that Richard V. Oulahan was neither an officer nor an agent of the defendant.

The evidence in support of the motion disclosed the following facts substantially:

The defendant corporation publishes the Sun in the city of New York exclusively.

On November 1, 1895, it leased certain rooms (first three and now six) in the building numbered 1417 G street N. W., which are occupied by Richard V. Oulahan and from nine to fourteen employees.

The name on the entrance door is "New York Sun." Mr. Oulahan is an employee of the defendant and draws a salary. He has charge of the office, and employs and discharges the employees under him. He draws weekly on the defendant for his salary and the expenses of maintaining the office, including the rent. The money drawn is kept in a local bank to Oulahan's credit, and drawn out by him on his own checks. No papers are sold or distributed from this office.

The defendant is not a member of the Associated Press, but has a news service of its own. Its press association service collects news and transmits it to certain newspapers. Among these are the Chicago Tribune, St. Louis Democrat, and Raleigh Post. Each of these papers makes its arrangements with the defendant for the service, and does not pay Oulahan therefor. As each of said papers has a special correspondent in Washington and maintains a private wire thereto, Mr. Oulahan furnishes each of said correspondents with a typewritten copy of his daily news report. This is done for convenience to save the transmission first to New York and thence to said papers. By arrangement with Oulahan, those correspondents pay him the cost of making the copies, and the money so received is used by him in paying the expenses of the office in Washington. The money is used for the benefit of defendant. The city directory, under the head of newspapers, has "The New York Sun and New York Sun Association, office 1417 G street, northwest." Mr. Oulahan testified that the name "New York Sun Association" means nothing; that he wanted it changed to "Press Association," which indicates an organization that gathers news and transmits it to newspapers, but dropped the matter because it would involve an extra charge. Testimony also tended to show that the newspaper containing the alleged libel had been circulated in the District of Columbia.

Upon this evidence the court sustained the motion to vacate the service and quash the return.

The service of summons was had under sec-

tion 1537 of the District Code, which relates to service on foreign corporations. So much of that section as is pertinent reads as follows: "In actions against foreign corporations doing business in the District all process may be served on the agent of such corporation or person conducting its business."

To sustain the service of summons in this case it must appear that the defendant corporation was doing business in the District, and that Richard V. Oulahan, upon whom service was made, was its agent or the person conducting its business. Whether the defendant, in respect of its business of publishing a newspaper merely, was doing business in the District also, by virtue of the fact that it maintained offices therein under the management of an employee charged with the duty of gathering news and transmitting it to the defendant in New York, for use in its publication there, presents an important question which we do not find it necessary to decide. There are other substantial grounds upon which the validity of the return showing the execution of the summons may be rested.

In addition to its ordinary and chief business, namely, that of publishing a daily newspaper in the city of New York, the defendant was engaged in carrying on the business of a "press association." This consisted in furnishing its general news reports to other publishers of newspapers throughout the country upon terms and for a consideration agreed upon with them, the particulars of which have not been disclosed.

Probably the maintenance of a permanent office in the District of Columbia, with a large force of newsgatherers and other employees, was due to the fact that the national capital is a desirable and convenient place for the collection of news items of importance to the patrons of the press association branch of defendant's business.

However this may be, it is shown that it was convenient—that is, it saved time and expense—for the manager of the local office to make direct delivery of the news reports collected and made up under his direction to certain of the newspapers that had contracted with the defendant for the service. Copies of these reports were made in the local office by the manager thereof and delivered there to the representatives of the newspapers aforesaid for direct transmission by them. The central office in New York had nothing to do with this part of the business beyond receiving the compensation contracted for. The additional charge for the copies made and delivered in the local office, and made necessary by the arrangement for direct delivery, was paid by the receivers to Oulahan. He fixed the charge, collected the money, and used it for the defendant's benefit in part payment of the general expenses of the office in his charge.

Tested by all of these conditions, we are of the opinion that the defendant as a foreign corporation was doing business in the District of Columbia at the time of the service of the summons. In re Hohorst, 150 U. S., 653, 663; Mutual Life Ins. Co. v. Spratley, 172 U. S., 602, 610; Lumbermen's Ins. Co. v. Meyer, 197 U. S., 407, 414; Tuchband v. C. & A. R. R. Co., 115 N. Y., 437, 440.

Whether Oulahan was the agent of the defendant corporation, in the sense of the statute, depends not so much upon what he may have been called in the contract for his employment, or upon the fact that he received a general salary for all services rendered, of whatsoever nature, as upon the real character of the duties with the performance of which he was charged.

We do not consider it either necessary or important, however, to consume time with a discussion of the many authorities relating to the question of what is necessary to constitute one an agent of a foreign corporation for the purpose of accepting service, or being served with process binding the corporation, for these depend in great measure upon the terms of the particular statutory provisions involved. Undoubtedly, the Congress had the power, in permitting, or recognizing the right of foreign corporations to conduct business in the District of Columbia, to designate the persons representing them who might be served with process in actions brought against them therein. In exercising this power the Code provides that such service may be had not only upon the agent, but also upon the "person conducting its business."

This additional provision would seem to have been made for the express purpose of preventing some of the controversies that have arisen under statutes of like general intention in respect of the facts sufficient to constitute one an agent merely of a non-resident corporation.

Whether, then, Oulahan may be regarded as the agent of the defendant corporation is, in our view, immaterial. He was, at least, conducting the business which, as has been held, the defendant was doing in the District of Columbia at the time of the service of the summons upon him. We are of the opinion that the service of the summons was effectual to bring the defendant before the court. The judgment vacating the return will, therefore, be reversed with costs, and the cause remanded for further proceedings in due course of procedure. It is so ordered. Reversed.

MAUD E. BOOTH, APPELLANT,

v.

GRANT S. ARNOLD.

**SEVENTY-THIRD RULE; AFFIDAVIT OF DEFENSE.**

1. Where the defendant's affidavit of defense is within the scope of the pleas pleaded, and by any fair construction constitutes a defense to the action as stated in the declaration, judgment under the 73d rule must be denied and the case tried in the ordinary course.
2. The plaintiff can not convert his affidavit accompanying the declaration into a pleading and, by anticipating a defense, require the defendant in his affidavit to negative or defend against such new matter of claim.
3. An affidavit of defense held sufficient to defend against the case stated in the declaration, and a judgment for plaintiff under the 73d rule reversed.

No. 1834. Decided April 4, 1906.

**APPEAL** by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 47,858, entered under the seventy-third rule for insufficiency of an affidavit of defense. Reversed.

*Mr. Eugene A. Jones* for the appellant.

*Mr. Wharton E. Lester* for the appellee.

*Mr. Chief Justice SHEPARD* delivered the opinion of the Court:

This case involves the application of the seventy-third rule of the Supreme Court of the District of Columbia, providing for the entry of summary judgment on motion in an action arising *ex contractu*. On July 14, 1906, the appellee, as plaintiff, began an action of assumpsit against the appellant and her husband, Roland O. Booth, upon a promissory note for \$1,200, executed by them jointly and on which certain credits were allowed. The declaration contains the ordinary common counts also. It is not denied that the plaintiff's affidavit was sufficient to warrant the entry of judgment, unless satisfactorily met by the pleas and counter-affidavit of the defendant. In addition, the plaintiff's affidavit anticipates a probable defense. In so doing, it recites at length certain transactions between the parties relating to a former judgment recovered against both defendants and since satisfied, and to certain transactions respecting the purchase and improvement of certain lots out of which the note sued on arose, the same being secured by a second trust. The affidavit then proceeds as follows:

"Thereafter litigation ensued concerning said real estate and said notes, which resulted in the Supreme Court of the District of Columbia decreeing on, to wit, the twenty-seventh day of January, 1904, that said promissory notes were an existing indebtedness of said defendants Booth, and secured upon said real estate, as more particularly appears in equity cause number 23,883 in said court. And thereafter the trustees named in said deed of trust, by virtue of the provisions thereof, default having been made in the payment of said notes, sold and conveyed said real estate, receiving therefor the sum of \$450 or \$100 for each lot, and said trustees paid the expenses of said sales, taxes on said real estate, and paid affiant on account of said note the sum of \$176.43, on the said eighteenth day of August, 1904, leaving the balance of said note now due and unpaid."

The defendant, Maud E. Booth, filed a plea of non-assumpsit, and a special plea to the effect that, on August 2, 1902, she was, and has since been, the wife of Roland O. Booth, that the note sued on was executed by her without any consideration whatsoever moving to her, and for the benefit and accommodation of her said husband, and said plaintiff, all of which was well known to the plaintiff at the time of accepting said note. Her supporting affidavit specifically denied any indebtedness to the plaintiff on account of the note sued on, and recites at length an agreement between the plaintiff and her husband relating to the discharge of a judgment against him and the purchase of certain lots in her name, and their improvement. This apparently refers to the same transaction recited in plaintiff's affidavit. She further says, in accordance with this plan, "The title to said lots was acquired in my name. I paid nothing for the property, had no interest in the transaction, received nothing of value for anything I did concerning it, and merely permitted my name to be used at the request of Grant S. Arnold and my said husband and for their accommodation, because the said Roland O. Booth was unable to take title by reason of certain unsatisfied judgments then of record against him, all of which was well known



to and consented to by said Grant S. Arnold."

It is further stated, substantially, that, in further execution of the agreement referred to, defendant joined her husband in the execution of certain notes to one Lillie T. Taplin, together with the note for \$1,200 on which this suit is brought. In conclusion, she states that she never received anything of value for any of the said notes executed by her, and that it was fully understood between the plaintiff, her husband, and herself that she was not to receive anything for her connection with the transaction; that she was to be merely a figurehead to take and make title at the request of plaintiff and her husband; that, under the terms of the agreement, the proceeds of the sale of the property were to be devoted to the payment of said first and second deeds of trust, then to pay off the trust held by said Arnold, representing the sole debt of Roland O. Booth to said Arnold, and the advances made by said Arnold toward the acquisition and improvement of said property, the balance to be divided equally between plaintiff and said Roland O. Booth. The affidavit then concludes as follows:

"That the plaintiff Arnold well knows and knew when he received said notes that I received and was to receive no consideration for said notes or any of them; that I made the same merely for the purpose of accommodating my said husband and the said Grant S. Arnold in the furtherance of the joint enterprise entered into between the said Arnold and my husband."

Judgment was rendered for plaintiff against both defendants on motion, and Maud E. Booth has appealed therefrom.

We are of the opinion that it was error to enter the judgment on said motion. The case is determinable primarily by the pleadings, not by the affidavits. The plaintiff's declaration is on a note, and the affidavit, so far as it supports the declaration, is ample, but the special plea, also supported by affidavit, tends to show a ground of defense to the cause of action as stated. The plaintiff's affidavit undertakes to allege a decree in equity relating to the indebtedness claimed as conclusive of the matter set up in defense. Whether that decree is sufficiently stated so as to show a former adjudication of the matters alleged in the defensive plea will not be considered. However this may be, the fact is not in support of any allegation in the declaration. It goes merely to anticipate and defeat the defense thereafter pleaded. The seventy-third rule contemplates no such extended application. It is a simple, direct means of obtaining speedy judgment in actions arising ex contractu, where the affidavit of the plaintiff completely supports the case made in the declaration and complies strictly with all other conditions of the rule. However, if the defendant's affidavit is within the scope of the defensive plea, and by any fair construction constitutes a defense to the action as stated in the declaration, judgment must be denied and the case tried in the ordinary course. The plaintiff can not convert his affidavit into a pleading and, by anticipating a defense, require the defendant to negative or defend against such new matter of claim. To permit this would be a conversion of the affidavits into pleadings,

which is clearly not within the contemplation of the rule. *Strauss v. Hensey*, 7 App. D. C., 289, 294: 23 Wash. Law Rep., 842.

In that case the scope and purpose of the seventy-third rule was thus stated by Chief Justice Alvey:

"The court can not question or traverse the truth of the facts stated in the defendant's affidavit. Those facts the court is bound, for the purpose of securing to the defendant the right of trial, to assume as true, and that, too, without reference to what the plaintiff may have stated in his affidavit. If the facts stated by the defendant, by any reasonable or fair construction, will constitute a defense to the action or claim of the plaintiff, within the scope of the pleas pleaded, it is the absolute constitutional right of the defendant to have that defense regularly tried and determined in due course of judicial investigation. No rule, however beneficial it may be, as a means of preventing the use of sham or feigned defenses, or desirable for the expedition of business, can deprive the defendant of this right."

The language quoted applies to and governs the conditions presented in the case at bar. Judgment must, therefore, be reversed with costs, and the case remanded for trial in due course of procedure.

Reversed.

MAE MARSHALL, ONLY CHILD AND HEIR  
AT LAW OF EDMUND J. OVERAND,  
DECEASED, APPELLANT,

v.

EDITH A. LANE.

#### EQUITY; REFORMATION OF DEED; MISTAKE.

1. Real estate was purchased by a husband and wife and the title taken in their joint names. Their intention was to hold as tenants in common, and they were advised by a mutual friend that the deed of conveyance to them had that effect; but, under the law then in force in this District, the deed had the effect of vesting the estate in them as tenants by the entireties. Held, that a court of equity would, under the circumstances of this case, reform the deed so as to make it express the intention of the parties.
2. The mutual mistake made under such circumstances is rather one of fact than of law, and is subject to reformation upon established legal principles applicable to mistakes of that character.
3. The mutual mistake of the parties as to the title under which they held is analogous to a mistake of fact in that it was a mistake of private right rather than of general law relating to the subject-matter of an ordinary contract.

No. 1582. Decided April 4, 1906.

APPEAL by defendant from a decree of the Supreme Court of the District of Columbia, in Equity, No. 24,757, in suit to reform a deed. Affirmed.

Mr. B. F. Leighton for the appellant.

Mr. D. W. O'Donoghue for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

Edith A. Lane, as sole heir at law of Edmund J. Overand, filed this bill against Emma J. Overand, surviving wife of said Edmund J. Overand, to reform a deed, under which the latter claimed title to lot 8 in John G. Slater's subdivision of lots in square 917, in the city of

Washington, and to vest the title of one-half thereof in the complainant.

It appears that in 1883, Edmund J. Overand married the defendant, who was then a widow, in the State of New York where they then resided. Each had one child, a daughter, and no children were born of the last marriage. Removing to Washington, where the husband obtained a position in the Bureau of Engraving upon a salary of about \$125 per month, they concluded to purchase the lot in controversy, the same having a brick dwelling upon it. The price paid was \$5,500, the bulk of which was in monthly instalments.

There was some question between them as to how the title should be taken, and it was determined that it should be in the names of both, that is to say, one-half to each. The conveyance was made to them, reciting their names and the consideration as paid by both, and the habendum clause read thus: "To have and to hold the said land and premises and appurtenances unto and to the only use of the parties of the second part, their heirs and assigns forever."

While the strict legal effect of the terms of the deed, as the law then was in the District of Columbia, was to create a tenancy by the entirety in the husband and wife, it is quite clear from the evidence that both of the grantees intended and understood it to vest the title in them as tenants in common. The mutual friend who advised them to make the purchase so understood the direction to make the deed, though he also, erroneously, advised them that being a homestead the survivor would be entitled to the possession of the interest of the first one deceased, during his or her life. This friend had some knowledge of the law of a western and a southern State, wherein such rights exist in a family home, and wherein joint tenancy and tenancy by the entirety had long since been abolished.

Nothing occurred to disturb this belief, and both evidently remained therein until the death of the husband, which occurred on August 5, 1903. Though the direct evidence is ample to sustain this conclusion, it is further attested by the fact that the husband was induced to sign a will some time before his death wherein he undertook to give all of his property, real, personal, and mixed, to his wife, relying upon her to do what is right by his daughter, and providing that if his wife should die without leaving a will, or having sold his real estate, then it was his desire that his undivided one-half interest in his real estate, and the whole of his personal estate shall go to his daughter Edith. It appears that he had no other real estate than the interest which he supposed was vested in him by the deed aforesaid. Whether this will was formally executed was not attempted to be proved, but it went into the possession of the defendant, was produced by her, and no attempt has ever been made to probate it. The defendant died after the decree was rendered sustaining the bill and granting its prayer for relief, and Mae Marshall, her heir at law, was made a party in her stead, and has prosecuted this appeal.

Under the facts before recited, it is contended, on behalf of the appellant, that they show, at most, but a mere mistake of law, from the ef-

fects of which a court of equity will not relieve.

It is true that, as a general rule, equity will not reform a written instrument where there has been no element of imposition, and the single thing not understood by the parties was the legal effect of the language used. But, while this rule obtains, there are many well established exceptions to its operation, under one of which we think this case falls.

As was said by Mr. Justice Harlan, in *Griswold v. Hazard*, 141 U. S., 260, 284: "While it is laid down that 'a mere mistake of law, stripped of all other circumstances, constitutes no ground for the reformation of written contracts,' yet, 'the rule that an admitted or clearly established misapprehension of the law does create a basis for the interference of courts of equity, resting on discretion and to be exercised only in the most unquestionable and flagrant cases, is certainly more in consonance with the best considered and best reasoned cases upon this point, both English and American.'" Citing *Snell v. Insho*, 98 U. S., 85, 90, 92, and many other cases.

In the case quoted from, a formal bond in a legal proceeding had been executed by the party asking relief from its obligation, and in coming to its conclusion the court said (p. 283): "There was no mistake as to the mere words of the bond; for it was drawn by one of Hazard's attorneys, and was read by Griswold before signing it. But according to the great weight of the evidence, there was a mistake on both sides as to the legal import of the terms employed to give effect to the mutual agreement. In short, the instrument does not express the thought and intention which the parties had at the time of its execution. And this mistake was attended by circumstances that render it inequitable for the obligees in the bond to take advantage of it."

In the case at bar the equity for reformation is even stronger. The facts show plainly what interest the grantees in the deed intended to take, and fully believed they had taken. The grantor had no interest in the matter and doubtless thought that the deed conformed to that intention. The technical language of the conveyance would, at that time, have vested title in the grantees as tenants in common everywhere throughout the Union probably, save in the District of Columbia, and would therein now under the recently adopted Code (section 1031). The grantees accepted the deed, apparently without examination, and certainly without taking skilled advice in respect of the legal effect of the terms employed to pass the title; and neither party seems ever to have entertained a suspicion that their instructions had not been given complete legal effect.

The mutual mistake made under such circumstances comes nearer being one of fact than of law, and is subject to reformation upon established legal principles applicable to mistakes of that character. 2 Pom. Eq., sec. 845; *Park v. Blodgett*, 64 Conn., 28, 34; *Canedy v. Marcy*, 13 Gray, 373, 376; *Trusdell v. Lehman*, 47 N. J. Eq., 213, 220.

Again, the mutual mistake of the parties in respect of the title under which they held the property is analogous to a mistake of fact, in that it was a mistake of private right rather

than of general law relating to the subject-matter of an ordinary contract. *Cooper v. Phibbs*, L. R., 2 H. L., 149. The complainant in that case had, through a mistaken construction by all parties of certain deeds of settlement and an act of Parliament relating thereto, taken a lease from the defendant of property which by a proper construction of those instruments was actually vested in himself at the time. There was no element of mistake or fraud. Lord Westbury, in giving an opinion sustaining the bill for relief, said: "The result, therefore, is that at the time of the agreement for the lease which it is the object of this petition to set aside, the parties dealt with one another under a mutual mistake of their respective rights. . . . It is said, 'ignorantia juris haud excusat,' but in that maxim the word 'jus' is used in the sense of denoting general law, the ordinary law of the country. But where the word 'jus' is used in the sense of a private right, that maxim has no application. Private right of ownership is a matter of fact. It may be the result also of matter of law; but if the parties contract under a mutual mistake and misapprehension as to their relative and respective rights, the result is that that agreement is liable to be set aside as having proceeded upon a common mistake."

The decree entered was right, and will therefore be affirmed, with costs.

Affirmed.

KATHERINE ATKINS ET AL, BY NEXT  
FRIEND, APPELLANT,  
v.  
MARY BEST.

WILLS; CONSTRUCTION OF DEVISE; INTENT OF TESTATOR; EVIDENCE.

1. Evidence of extrinsic circumstances, such as the testator's relation to persons, or the amount, character, and condition of his estate, is sometimes admissible to explain ambiguities of description in his will, but never to determine the construction or extent of the devise therein contained.
2. The circumstance that the will to be construed was written by the testatrix herself, evidently an unskilled person, is entitled to limited weight in determining the construction to be given its provisions.
3. Testatrix, by her will, which was written by her without legal advice or assistance, gave to her mother, without words of limitation, certain real estate in this city, and also gave to her for life the income from a farm in Pennsylvania which was devised to others in general terms. It appeared from the whole will that testatrix evidently intended to dispose of her whole estate. *Held*, that the devise to the mother of testatrix of the real estate in this city passed the fee simple title thereto.

No. 1587. Decided March 6, 1906.

APPEAL by complainants from a decree of the Supreme Court of the District of Columbia, in Equity, No. 24,853, in suit to construe a will. Affirmed.

Mr. A. A. Birney and Mr. H. C. Tralles for the appellants.

Mr. R. G. Donaldson for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

The bill in this case was filed in the names of Katherine and Leicester B. Atkins, children and heirs at law of Kate Best Atkins, by their next friend, Joseph L. Atkins.

The defendant is Mary Best, the mother of Kate Best Atkins, who, it is alleged, took an estate for life in the premises described under the will of said Kate Best Atkins.

It is further alleged that the said premises (a house and lot in the city of Washington) are subject to a deed of trust previously executed by said Kate Best Atkins to secure the sum of \$3,000; that defendant has failed to pay the interest accruing due thereon, and that complainants' next friend and guardian has been compelled to pay the same to prevent a sale under the terms of said trust; that it is the legal duty of defendant, as life tenant, to pay the taxes accruing due on said property; that she has failed to pay the same, and the said property has been sold for taxes for the years 1903 and 1904; that complainants have been compelled by the terms of the trust aforesaid to redeem the said property from said sale to prevent a foreclosure; that it is the purpose of said defendant not to pay the interest accruing upon said trust debt, or the taxes on the said property as they shall become due. It is further alleged that by the payments they have been compelled to make of interest and taxes, they have a charge upon the life interest of defendant, and that if the cloud upon their title to the reversion of said estate were removed, they could raise the money to pay off said trust lien, etc.

The prayers are, that the will under which defendant claims may be construed, and her right in said premises be declared to be an estate for life only, and that a receiver may be appointed to take possession of said property and to apply the rentals thereof to the repayment of interest and taxes advanced by the complainants, and to the payment of future interest and taxes until the defendant shall otherwise provide for the payment thereof.

The will, under which the defendant claims and which is to be construed reads as follows:

*Last Will and Testament of Kate Best Atkins, Made This Day, May Twenty third, Eighteen Hundred and Ninety-four A. D.*

I will and bequeath to my mother, Mary Best, now of Washington, District of Columbia, one lot and parcel of ground in Mt. Pleasant, Washington city, District of Columbia, situate on what is now called Seventeenth street extended, bounded on the north by Mrs. Rose Icker's property, on south by terrace on which residence of Kate Best Atkins stands, east by said Seventeenth street extended, and west by residence. I will and bequeath the income from my Salona, Pennsylvania, farm to my mother, Mary Best, during her life.

I will and bequeath my solitaire diamond pin to my mother, Mary Best.

I will and bequeath to my dear children, Katherine B. and Leicester B. Atkins, the farm at Salona, Clinton county, in the State of Pennsylvania.

I will and bequeath our home, 3202 Seventeenth street Mr. Pleasant, District of Columbia, to my husband, Joseph L. Atkins, and my dear children, Katherine B. and Leicester B. Atkins, my mother, Mary Best, to live with my husband and children during life, if all is mutually agreeable.

My piano I will to the child who shows something of a musical ability. I will to my daughter, Katherine B. Atkins, my diamond pendant and diamond guard ring. To my son, Leicester B. Atkins, my diamond engagement ring and my little horse-shoe ring; to my husband my diamond and sapphire ring and the use of my silver marked with "K. B. A.", so long as he wants to use it, then to be divided between my children. Jewelry not already mentioned to be divided between my dear children.

Lands not before mentioned in Pennsylvania I will and bequeath to my husband and children.

To my mother one suit of bedroom furniture in place of hers that was sold.

My hand-painted china and pictures to be divided between my four heirs.

My beautifully decorated vases I will to my husband.

Signed and sealed before these witnesses, this twenty-fifth of May, eighteen hundred and ninety-four, A. D.

(Signed) KATE BEST ATKINS. [Seal.]

Witnesses:

CHRISTIAN B. DICKEY, [Seal.]

FRANK L. DICKEY, [Seal.]

W. J. BOWMAN, [Seal.]

In her answer defendant claims that she took title in fee to the premises described under the will of Kate Best Atkins. She admits the existence of the trust as alleged and avers that she paid interest thereon and taxes until the complainants, through their father and next friend, set up the claim that she was entitled to a life estate only therein. She also alleges that she was the mother of the testatrix, and that under the will of Abraham H. Best, the grandfather of testatrix, defendant was entitled to reside during life upon certain property in Pennsylvania, devised by said testator to said Kate Best Atkins, and that by said will she took in fee a half interest in the farm in Salona, Pennsylvania. That by the persuasion of Joseph L. Atkins, the husband of her daughter Kate Best Atkins, she consented to the sale of said home, and made her home with him upon his removal to the city of Washington. That said Kate Best Atkins wrote her will without legal advice or assistance, and submitted the same to her, and said that she had given her the premises devised to her in lieu of her surrender of her interest in the Pennsylvania home. That she advanced sums of money at various times to the testatrix. That the premises in question are not worth more than \$6,000 or \$7,000, and could not be rented for anything for want of necessary improvement. She also avers that the farm mentioned in the will is the same devised to her and to testatrix by said Abraham H. Best, a copy of whose will is attached to her answer.

The cause was submitted upon the bill and answer, and the court construing the said will of Kate Best Atkins as vesting a fee simple estate in the defendant, entered a decree to that effect, from which complainants have appealed.

1. We are of the opinion that the extrinsic circumstances relied on in the defendant's answer, which consist of the recital of the interests in certain lands vested in her by the will of Abraham H. Best, of the transactions between her and Kate Best Atkins and husband

concerning the sale of certain of those interests at their request and for their advantage, of the advances of money to the testatrix, and of the submission of the draft of Kate Best Atkins' will to defendant for her approval, before its execution, can not be considered as aids in the construction of the last named will under which the defendant claims an estate in fee in the lands in controversy.

Evidence of such extrinsic circumstances as the testator's relation to persons, or the amount, character, and conditions of his estate is sometimes admissible to explain ambiguities of description in his will, but never to determine the construction or the extent of the devises therein contained. *King v. Ackerman*, 2 Black, 408, 418; *Barker v. Pittsburg, etc., Railway*, 166 U. S., 83, 108; *McAleer v. Schneider*, 2 App. D. C., 461, 467; 22 Wash. Law Rep., 193.

The circumstance, however, that the will to be construed was drawn by the testatrix, evidently an unskilled person, may be given limited weight in view of what has been said by the Supreme Court of the United States in respect of the rigid adherence to precedents, and the strict application of rules of construction to wills where a testator, unlearned in the law, has acted as his own scrivener. *Abbott v. Essex Co.*, 18 How., 202, 213; *McCaffrey v. Manogue*, 196 U. S., 563, 571.

2. The ancient rule prevailed in the District of Columbia when this will took effect that where a devise contains no words of limitation or description of the extent of the estate passed, the devisee takes for life only, unless from an examination of the language of the entire will it shall appear with reasonable certainty that the real intention of the testator was to create a greater estate. *Wright v. Page*, 10 Wheat. 204, 227; *McAleer v. Schneider*, 2 App. D. C., 461, 467; 22 Wash. Law Rep., 193.

This rule reflected the policy of the English law, which favored the heir and would not suffer him to be disinherited save upon the plain expression of that intention by unmistakably conferring the whole of the estate upon another. The policy of the law has undergone a change in this country, at least, and we have arrived at a time "when the rights of heirs are not so insistent, and the rule in their favor lingers, where it lingers at all, almost an anachronism; when ownership of real property is usually in fee, and when men's thoughts and speech and dealings are with the fee." *McCaffrey v. Manogue*, 196 U. S., 563, 571. Consequently, and for the reason that the real intentions of testators, who commonly act as their own scriveners, are believed to have been very often thwarted by the strict application of this artificial rule, the tendency of the latest decisions, in those jurisdictions where the rule has not been abolished by statute, seems to be to search the entire will closely for the sufficient indication of an intention that will rescue it from its operation.

The present will, both in the particular devise and in its several terms, bears resemblance to that recently construed by the Supreme Court of the United States, and held to pass an estate in fee, in the case of *McCaffrey v. Manogue*, supra.

As we have seen, the will was drawn by the testatrix herself without legal advice or assist-

ance. As in the will construed in *McCaffrey v. Manogue*, the testatrix evidently intended to dispose of her entire estate, for while there is no introductory clause expressing that intention, there is no residuary clause indicating that less was intended to be passed, her two heirs at law are named among her devisees and legatees. Each special devise is without words of limitation, but the immediately succeeding and last sentence of the paragraph devising the land in controversy to the appellee, gives her the income of the Salona (Pennsylvania) farm "during her life." This is a strong circumstance, indicating that her intention was to create the greater estate in the former. Then, immediately thereafter, the testatrix devises the Salona farm to her two children in general terms, with no words of limitation whatever, and without mention of the life estate therein previously devised to the appellee. It seems evident that she intended them to take the remainder thereof in fee. See cases cited in *Young v. Norris Peters Co.*, present term. Tested by the doctrine enounced in *McCaffrey v. Manogue*, supra, our conclusion is that the testatrix intended to pass the fee of the property in controversy to the appellee. The decree to that effect was right, and will therefore be affirmed, with costs, but without prejudice to the assertion hereafter, on the part of the appellants, of their right to recover such sums as they may have advanced in payment of proper charges against the said estate. It is so ordered.

Affirmed.

In case of the burning of cotton on a railroad platform, in the course of delivery, it is held, in *Lehman, S. & Co. v. Morgan's Louisiana & T. R. & S. S. Co. (Mich.)*, 70 L. R. A., 562, that the carrier is bound to prove the origin of the fire, and that it was purely accidental and impossible to prevent.

That it is not negligence, as matter of law, for a passenger who is upon a train so crowded that he can not find a seat, and becomes sick because of lack of proper ventilation, and tobacco smoke, to seek relief upon a platform when unable to reach a window, is declared in *Morgan v. Lake Shore & M. S. R. Co. (Mich.)*, 70 L. R. A., 609.

Requiring a foreign corporation to pay a license fee as a condition precedent to the right to do business in the State, or subject itself to penalties supposed to be prescribed by a statute, is held, in *O. & J. Michel Brewing Co. v. State (S. D.)*, 70 L. R. A., 911, not to be such compulsion as will entitle it to recover the amounts paid in case the statute is adjudged to be unconstitutional.

#### RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

## Legal Notices.

### FIRST INSERTION.

**Geo. C. Aukam, Attorney**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Mary C. Fryor, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 80th day of April, 1906. CHAS. H. BRUCE, 1618 Corcoran st. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,627. Administration. [Seal.] 19-St

**Wolf & Rosenberg, Attorneys**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of George Cohen, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 7th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of May, 1906. JULIUS COHEN, 1100 7th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,640. Administration. [Seal.] 19-St

**H. G. Kimball, Solicitor**

In the Supreme Court of the District of Columbia.

Saillie R. Reeves v. J. Edgar Reeves et al.

No. 26,204. Equity Docket, No. 58.

The object of this suit is to obtain an absolute divorce. On motion of the complainant, it is, this 7th day of May, A. D. 1906, ordered that the defendants, J. Edgar Reeves and Grace Dawson, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Times. By the court: [Seal] HARRY M. CLABAUGH, Chief Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 19-St

**Irving Williamson, Attorney**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John Prioleau, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of May, 1906. LIZZIE V. PRIOLEAU, 1930 14th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,655. Administration. [Seal.] 19-St

**Perri W. Frisby, Attorney**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Fannie Chapman, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 9th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of May, 1906. JOHN C. NORWOOD, 1632 Kalorama Road. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,218. Administration. [Seal.] 19-St

**Legal Notices.**

**Carlisle & Johnson, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of James H. Forsyth, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 4th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of May, 1906. MARY ANN FORSYTH, 1802 Belmont road. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,612. Administration. [Seal.] 19-31

**Alex. H. Bell, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Patrick Crowe, Deceased.**  
**No. 13,609. Administration Docket.**

Application having been made herein for letters of administration on said estate by Dr. John W. Crowe, it is ordered this 10th day of May, A. D. 1906, that Margaret Maloney nee Crowe, Bridget Gallaher nee Crowe, and all others concerned, appear in said court on Friday, the 15th day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Times once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day. [Seal] WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 19-31

**J. J. Darlington, Attorney**  
**In the Supreme Court of the District of Columbia.**  
**Special Term for Probate Business.**  
**In the Matter of the Estate of Henry Murray, Deceased.**

**No. 13,631. Admn. Doc. —.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by B. Francis Saul and Patrick Smyth, it is ordered this 11th day of May, A. D. 1906, that Daniel Murray, and all others concerned, appear in said court on Tuesday, the 12th day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 19-31

**F. Sprigg Perry, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Henry Riggs Rathbone, Committee, Plaintiff v. Henry Reed Rathbone, Insane, Henry Riggs Rathbone, Gerald Laurence Rathbone, Clara Pauline Randolph, Defendants. Equity, No. 26,194.**

The object of this suit is to ratify the agreement of April 1, 1904, by and between the Cosmos Club of Washington, District of Columbia, on the one part, and Henry Riggs Rathbone, both as committees of Henry Reed Rathbone, Insane, and by said Henry Riggs Rathbone, Gerald Laurence Rathbone, and Clara Pauline Randolph, for the sale of lot 28 of Harvey Kennedy et al., trustees, subdivision of lots 12 and 15, and parts of lots 13 and 14 in square No. 221, in the city of Washington, District of Columbia, as per plat recorded in the office of the surveyor of the District of Columbia, in liber W. B. M., folio 39, and to authorize the sale of this lot, situate as aforesaid, upon the terms set forth in the bill of complaint. On motion of the complainant, it is, this 8th day of May, A. D. 1906, ordered that the defendant, Henry Reed Rathbone, Insane, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the case will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post. HARRY M. [Seal] CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 19-31

**Legal Notices.**

**John Ridout, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Joshua Bishop, Deceased.**

**No. 13,620. Administration Docket —.**

Application having been made herein for probate of the last will and testament and codicil of said deceased, and for letters of administration with will annexed to Mary A. Rogers on said estate, by Nannie A. McEmore, a devisee, it is ordered this 8th day of May, A. D. 1906, that Thomas J. Bishop, Presley Alexander, Lee Moore, Roy Moore, Matie Moore, and Fannie Devin, and all others concerned, appear in said court on Friday, the 15th day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Evening Star, once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 19-31

[Seal] WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 19-31

**Geo. H. White, Attorney for Plaintiff**  
**In the Supreme Court of the District of Columbia.**  
**Ferdinand L. Bornett, Plaintiff, v. Israel Dorsey, Defendant. At Law, No. 45,412.**

The object of this suit is to recover from the defendant, Israel Dorsey, the sum of \$900.00, with interest at the rate of six per cent per annum from the 14th day of August, 1903, the said sum of money so claimed by the plaintiff being the amount paid by said Ferdinand L. Bornett for the use, benefit, and behoof of said Israel Dorsey, at his request, according to particulars of the defendant filed in this cause, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 4th day of May, 1906, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. By the [Seal] Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Alf. G. Buhrman, Asst. Clerk. 19-31

**Edward S. Bailey, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of William Walter, Deceased.**  
**No. 13,626. Administration Docket —.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by Dora Kramer, it is ordered this 8th day of May, A. D. 1906, that the unknown heirs at law and next of kin of William Walter, deceased, and all others concerned, to appear in said court on Tuesday, the 12th day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times, once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 19-31

[Seal] WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 19-31

**James F. Bundy, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Hyson I. Bossie, Deceased.**

**No. 13,639. Administration Docket —.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Thomas M. W. Greene and Daniel B. Webster, it is ordered, this 11th day of May, A. D. 1906, that notice be and hereby is given to James H. Bossie, and all others concerned, to appear in said court on Tuesday, the 12th day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 19-31

[Seal] WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 19-31

**Legal Notices.**

**Wilson & Barksdale, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**In re Estate of Harriet Seton Harris, Deceased.**  
 No. 13,538.

Application having been made herein for the probate of the last will and testament of Harriet Seton Harris, deceased, and for letters testamentary on said estate by Fannie C. Willis, the executrix therein named, it is ordered this 8th day of May, A. D. 1906, that George McAllister Harris, and all others concerned, appear in said court on the 11th day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided notice hereof be published in The Washington Law Reporter and Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL F. STAFFORD, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 19-St

[Seal]

**John B. Lerner, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Sarah E. McDonough, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of May, 1906. THE WASHINGTON LOAN AND TRUST CO., Andrew Parker, Treasurer. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,638. Administration. [Seal.] 19-St

**Edward L. Gies, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William F. Partlow, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of May, 1906. MARY ELIZABETH GAEGLER, 1522 8th st. N. W. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,629. Administration. [Seal.] 19-St

**Geo. C. Gertman, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Margaret Adams, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the 8th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of May, 1906. WILLIAM FRANCIS ADAMS, 1106 N. Y. ave. N. W. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,576. Administration. [Seal.] 19-St

**Brandenburg & Brandenburg, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Henry Kimmel, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of December, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of December, 1905. ANNIE KIMMEL, 608 Louisiana ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,804. Administration. [Seal.] 19-St

**Legal Notices.**

**Jas. F. Bundy, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Deillah Bacon, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 7th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of May, 1906. GEORGE R. BROWN, 1839 4th st. N. W. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,562. Administration. [Seal.] 19-St

**Leckie, Fulton & Cox, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Margaret McHenry, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 4th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of May, 1906. WILLIAM A. FOY, Columbian Building. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,648. Administration. [Seal.] 19-St

**Wilson and Barksdale, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Minson W. Boutwell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 4th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of May, 1906. NANNIE B. CROSWELL, 1828 Emerson st. N. E. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,556. Administration. [Seal.] 19-St

**F. R. Hilliard, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Margaret Carroll, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 4th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 4th day of May, 1906. WILLIAM H. MCGRANN, 508 F st., N. W.; MARY ELLEN HALPIN, 1580 Third st., N. W. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,546. Administration. [Seal.] 19-St

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Catharine Levi, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of May, 1906. THE WASHINGTON LOAN & TRUST CO., by Andrew Parker, treasurer. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,555. Administration. [Seal.] 19-St



**Legal Notices.**

Adam A. Weschler, Auctioneer  
(Successor to James W. Ratcliffe.)

**Executor's Sale of Valuable Unimproved Real Estate**  
on the Tanlaw Road, Arizona Avenue and Ridge  
Road, Between 39th and 46th Streets Northwest,  
Containing About 105 Acres, to be sold in 5 Par-  
cels.

By virtue of a decree of the Supreme Court of the Dis-  
trict of Columbia, holding a Probate Court, in re estate  
of Henry Kengle, deceased, the undersigned executor  
will offer for sale by public auction, in front of the res-  
pective premises, on Wednesday, the twenty-third day  
of May, A. D. 1906, commencing at four o'clock P. M.,  
the following described real estate, situate in the county  
of Washington, District of Columbia, to wit:

Parcel 1. Beginning at the northwest corner of Beatty  
and Hawkins' addition to Georgetown, thence north 86°  
12' west 1,202 feet to the east line of Arizona avenue;  
thence with the east line of Arizona avenue south 8° 21'  
west 734.66 feet; thence north 86° 42' 30" east 1,556.33 feet  
to the west line of Beatty and Hawkins' addition to  
Georgetown; thence north 28° 56' west 610.50 feet to the  
place of beginning, containing 20.81 acres.

**IMMEDIATELY THEREAFTER.**

Parcel 2. Beginning for the same at the intersection of  
the west line of Arizona avenue with the south line of  
Wesley Heights; thence along the west line of Arizona  
avenue south 8° 21' west 747.33 feet; thence south  
86° 42' 30" west 297.67 feet; thence north 18° 30'  
west 455.33 feet; thence north 24° 51' west 411 feet to the  
south line of Wesley Heights; thence along the south  
line of Wesley Heights north 86° 18' east 724.64 feet to the  
place of beginning, containing 8.765 acres.

**IMMEDIATELY THEREAFTER.**

Parcel 3. Beginning for the same on the east side of  
Arizona avenue at a point 734.66 feet southerly from  
its intersection with the south line of Wesley Heights;  
thence north 86° 42' 30" east 1,556.33 feet to the west line  
of Beatty & Hawkins' addition to Georgetown; thence  
with said west line south 23° 56' east 495 feet; thence  
south 79° 56' west 1,884.66 feet to the east line of Arizona  
avenue; thence with the east line of Arizona avenue  
north 8° 21' east 698.31 feet to the place of beginning,  
containing 22.61 acres.

**IMMEDIATELY THEREAFTER.**

Parcel 4. Beginning for the same on the west line of  
Arizona avenue 747.33 feet southerly from its intersec-  
tion with the south line of Wesley Heights; thence south  
86° 42' 30" west 297.67 feet; thence south 86° 29' west  
1,532.10 feet to the east side of Ridge road; thence with  
the east side of Ridge road south 72° 30' east 395.23 feet;  
thence south 12° 32' east 400.93 feet; thence north 86° 25'  
26" east 525.43 feet; thence south 18° 50' east 191.41 feet;  
thence south 61° 4' 40" east 1,001.63 feet to the west line  
of Arizona avenue; thence with the west line of Arizona  
avenue north 8° 21' east 405.33 feet; thence north 5° 45'  
10" west 409.34 feet; thence north 78° 56' east 105.07 feet to  
the west line of Arizona avenue; thence with the said  
west line north 8° 21' east 710.81 feet to the place of begin-  
ning, containing 40.76 acres.

**IMMEDIATELY THEREAFTER.**

Parcel 5. Beginning for the same on the east side of  
Arizona avenue at a point 1,972.61 feet southerly from its  
intersection with the south line of Wesley Heights;  
thence north 88° 30' east 936.24 feet; thence south 0° 12'  
east 801.38 feet; thence south 88° 30' west 829.95 feet;  
thence north 36° 12' 30" west 299.60 feet to the east line of  
Arizona avenue; thence with said east line north 8° 21'  
east 889.44 feet to the place of beginning, containing  
12.83 acres.

Terms: One-third cash, the balance in one (1) and two  
(2) years, with interest from the day of sale at 5 per cent  
(5%) per annum, payable semi-annually, secured by deed  
of trust on the property sold, or all cash, at the option of  
the purchaser. A deposit of \$500.00 on each parcel re-  
quired at the time of sale. If terms of sale are not com-  
plied with in 15 days from the day of sale, the executor  
reserves the right to resell the property at the risk and  
cost of the defaulting purchaser, after five (5) days' ad-  
vertisement of such resale in some newspaper published  
in the city of Washington, District of Columbia. All  
conveyancing, recording, etc., at purchaser's cost.

NOTE.—Plans of the above property obtained upon ap-  
plication to the undersigned, or the auctioneer, No. 920  
Pa. ave. N. W. EPHRAIM S. RANDALL, Executor, 7th  
Street Wharf Southwest. 19-2t

**Legal Notices.**

D. W. O'Donoghue, Attorney

In the Supreme Court of the District of Columbia,  
Holding a Probate Court.

In re Estate of James Dorsey, Deceased.  
No. 13,149. Adm. Doc. —.

**DECREE.**

Upon consideration of the report of Daniel W. O'Don-  
oghue, executor, filed herein on the 8th day of May, A. D.  
1906, that he has sold part of original lot 4, in square 23,  
in the city of Washington, in the District of Columbia,  
described as follows: Beginning at a point on the south  
line of I street distant twenty (20) feet east from the  
northwest corner of said lot and running thence south  
eighty (80) feet to the south line of said lot; thence east  
twenty (20) feet; thence north eighty (80) feet to the said  
south line of I street and thence west along said south  
line of I street twenty (20) feet to the place of beginning,  
for the sum of \$2,700.00 to Michael Dorsey, it is by the  
court, this 8th day of May, A. D. 1906, adjudged, ordered,  
and decreed that the said sale be and it is hereby ratified  
and confirmed, unless cause to the contrary be shown on  
or before the 11th day of June, 1906. Provided a copy of  
this decree be published in the Washington Law Re-  
porter and in The Washington Times, once  
[Seal] a week for three successive weeks before said  
date. WENDELL P. STAFFORD, Justice.

A true copy. Attest: Wm. C. Taylor, Deputy Register of  
Wills. 19-3t

**SECOND INSERTION.**

Henry S. Matthews, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the Dis-  
trict of Columbia and the State of Pennsylvania, respect-  
ively, have obtained from the Probate Court of the  
District of Columbia letters testamentary on the estate  
of Louis Mackall, late of the District of Columbia, de-  
ceased. All persons having claims against the deceased  
are hereby warned to exhibit the same, with the vouch-  
ers thereof legally authenticated, to the subscribers, on  
or before the 30th day of April, A. D. 1907; otherwise  
they may by law be excluded from all benefit of said  
estate. Given under our hands this 30th day of April,  
1906. LOUIS MACKALL, JR., 3044 O St. N. W.; ED-  
WARD J. WELD, Meyersdale, Pa. Attest: WM. C.  
TAYLOR, Deputy Register of Wills for the District of  
Columbia, Clerk of the Probate Court. No. 13,625. Ad-  
ministration. [Seal.] 19-3t

E. H. Thomas, Attorney

In the Supreme Court of the District of Columbia,  
Holding a Probate Court.

In re Estate of Reuben B. Detrick, Deceased.  
Adm. No. 12,549.

The executor and trustees having reported that he has  
sold premises Nos. 408 and 410 N street northwest, being  
lots numbered eighty-five (85) and eighty-six (86), in  
Bryant's subdivision of lots in square numbered five  
hundred and thirteen (513), in the City of Washington,  
District of Columbia, to E. C. Catts Company, incorpo-  
rated, for the sum of six thousand one hundred (\$6,100)  
dollars, net cash, it is, by the court, this 1st day of May,  
A. D. 1906, ordered that said sale be ratified and con-  
firmed, unless cause to the contrary be shown on or  
before the 1st day of June, 1906. Provided a copy of  
this order be published in The Washington

[Seal] Law Reporter once a week for each of three  
successive weeks before said last named day.  
WENDELL P. STAFFORD, Justice. A true copy. At-  
test: Wm. C. Taylor, Deputy Register of Wills. 19-3t

John Ridout, Attorney

In the Supreme Court of the District of Columbia,  
The Alcott-Ross Company, a Corporation, Plaintiff, v.  
Williamson and Libbey Lumber Company, a Cor-  
poration, Defendant. At Law, No. 48,400.

The object of this suit is to recover the sum of \$1,723.56  
against the defendant for breach of contract, and to  
have judgment of condemnation of certain credits of the  
defendant levied on under an attachment issued in this  
suit to satisfy the plaintiff's claim. It is, therefore, this  
25th day of April, 1906, ordered that the defendant ap-  
pear in this court on or before the fortieth day, exclusive  
of Sundays and legal holidays, after the day of the first  
publication of this order, to defend this suit and show  
cause why said condemnation should not be had; other-  
wise the suit will be proceeded with as in

[Seal] case of default. By the Court: WRIGHT,  
Justice. A true copy. Test: J. R. Young,  
Clerk, by F. W. Smith, Asst. Clerk. 19-3t

**Legal Notices.****W. H. Sholls, Attorney**

**In the Supreme Court of the District of Columbia.**  
**Katharina Herrmann v. The Unknown Heirs, Alien-**  
**ees, and Devises of John Harrison et al. Equity**  
**No. 28,208.**

The object of this suit is to perfect the title of the complainant to that part of original lots 10 and 11, in square 877, in the city of Washington, District of Columbia, described as follows: Beginning at the southeast corner of said original lot 10 and running thence west 3 feet, thence north 98 feet 6 inches, thence east 25 feet to a public alley, thence south, on the line of said alley, 8 feet 10 inches, thence west 7 feet, thence south 18 feet to lot 9, thence west 15 feet to the intersection of the dividing line between lots 9 and 11, and thence south 66 feet 8 inches to the place of beginning. On motion of the complainant it is this 2d day of May, A. D. 1906, ordered that the defendants, the unknown heirs, devisees, and alienees of John Harrison, deceased, and the unknown heirs, alienees, and devisees of Albert B. Norton, trustee, deceased, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of forty days from the first publication of this order, good cause therefor having been shown to the satisfaction of the court; otherwise this cause will be proceeded with as in case of default; provided a copy of this order be published in the Washington Law Reporter once a week for three

[Seal] successive weeks before said return day.  
 WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 18-3t

**M. J. Keane, Solicitor**

**In the Supreme Court of the District of Columbia,**  
**Holding Equity Court.**

**Michael McDonnell, Complainant, v. The Unknown**  
**Heirs, Alienees, and Devises of William Wham,**  
**William Stewart, John Ridgeway, Defendants. In**  
**Equity, No. 25,721.**

The object of this suit is to declare the title to lots 13, 14, 15, 18, 19, 20, and 21 of Brawner's subdivision of original lots 17 and 18, in square 1277, as the same is known and described on the ground plan of plat of city of Washington, District of Columbia, to be good in fee simple in the complainant by adverse possession. On motion of the complainant, by Michael J. Keane, his solicitor, it is, this 10th day of November, 1905, ordered that the defendants, the unknown heirs, alienees, and devisees of William Wham, William Stewart, and John Ridgeway, and each of them, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of the period of publication hereinafter described; otherwise this cause will be proceeded with as in case of default. Good cause having been shown, it is not necessary that this order should be published for a longer period than herein required. This order shall be published in The Law Reporter and The Washington Post once a week for four successive weeks before the first rule day occurring after

[Seal] the day of the first publication. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 18-4t

**Gordon & Gordon, Attorneys**

**In the Supreme Court of the District of Columbia.**  
**Edward Shoemaker v. William L. Shoemaker et al.**  
**Equity, No. 24,990. Docket 55.**

The object of this bill is to make sale of the tract of ground, in the District of Columbia, known as the "Quaker Burying Ground," and distribute the proceeds amongst the heirs of Jonathan Shoemaker, deceased. On motion of the complainant, it is this 2d day of May, 1906, ordered that the defendants, Julian Shoemaker, Caroline Jack, George A. Shoemaker, Adeline Shoemaker, Rachel Shoemaker, Ellen Lukens, H. Frank Davis, A. B. Davis, Charles G. Davis, John M. Davis, Samuel B. Davis, and Isaac L. Holmes, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star prior to said return day.

[Seal] HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 18-3t

New corporations can procure from the Law Reporter Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated, numbered, and bound.

**Legal Notices.****Thos. Walker, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of George W. Morgan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of April, 1906. MARY E. MORGAN, 600 2d st. S. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,508. Administration. [Seal.] 18-3t

**Lambert & Baker, Attorneys**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Bridget Gleason, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of April, 1906. WILTON J. LAMBERT, 410 5th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 9860. Administration. [Seal.] 18-3t

**John J. Brosnan, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Ellen Crumly, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of May, 1906. JOHN H. BRADLEY, 443 7th st. S. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,619. Administration. [Seal.] 18-3t

**Alex. H. Bell, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Katharine B. Sullivan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 30th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 30th day of April, 1906. JOHN J. SULLIVAN, 87 N. Y. ave.; DANIEL F. SULLIVAN, 1400 N. Cap. st. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,617. Administration. [Seal.] 18-3t

**Wilson & Barksdale and Burton Macafee, Attorneys**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Ann E. Coates, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 1st day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 1st day of May, 1906. ANNIE C. GUTHRIE, 1215 8 st. N. W.; MARY TERESA SPALDING, 2907 O st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,532. Administration. [Seal.] 18-3t

**Legal Notices.**

[Filed May 2, 1906. J. R. Young, Clerk.]

**Arthur G. Bishop, Joseph N. Saunders, Attorneys**  
**In the Supreme Court of the District of Columbia.**  
**Terrence J. McMahon v. John Sayle.**  
 Equity 28,199. Doc. 58.

The object of this suit is to perfect complainant's title to the west 27 feet front on F street by the full depth thereof of original lot five (5), in square one hundred and three (103), in the city of Washington, D. C. On motion of complainant, by Bishop and Saunders, his solicitors, it is, this 2d day of May, 1906, ordered that the defendant and his unknown heirs, devisees, and alienees, if he be dead, cause his or their appearance to be entered herein on or before the first rule day occurring after the expiration of forty days, exclusive of Sundays and legal holidays, from the date of the first publication of this order; otherwise this cause will be proceeded with as in case of default. This order shall be published in The Washington Law Reporter and The Washington Post once a week for four successive weeks before said return day, sufficient cause having been shown for dispensing with a longer period of publication.

[Seal] By the Court: **WENDELL P. STAFFORD**, Justice. A true copy. Test: J. R. Young, Clerk, by W. E. Williams, Asst. Clerk. 18-4t

**THIRD INSERTION.**

**Walter C. Balderston, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John W. Fawcett, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of April, 1906. **ANNA V. FAWCETT**, 1327 G st. N. W. Attest: **M. J. GRIFFITH**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,822. Administration. [Seal.] 17-3t

**Joseph R. Fague, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Jonathan Hamilton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of April, 1906. **SAMUEL M. TYLER**, 1324 5th st. N. W. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,508. Administration. [Seal.] 17-3t

**Campbell Carrington, Solicitor**

**In the Supreme Court of the District of Columbia.**  
**Martha M. Proctor, Complainant, v. Montague Proctor,**  
**Defendant; Clara Bailey, Co-respondent. No.**  
**25,858. Equity Docket No. 57.**

The object of this suit is to obtain an absolute divorce upon the ground of adultery. Provided a copy of this order be published once each week for three successive weeks in The Washington Law Reporter and The Washington Times. On motion of the complainant, by her solicitor, Campbell Carrington, it is this 25th day of April, A. D. 1906, ordered that the defendants, Montague Proctor and Clara Bailey, cause their appearances to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default.

[Seal] By the court: **HARRY M. CLABAUGH**, Chief Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 17-3t

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W.

**Legal Notices.**

**Burton T. Doyle, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Justina Lauer, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 20th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 20th day of April, 1906. **BURTON T. DOYLE**, 622 F st. N. W.; **WILLIAM P. C. HAZEN**, 511 E. Cap. st. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,510. Administration. [Seal.] 17-3t

**W. F. Mattingly, R. Ross Perry & Son, and John B. Lerner, Solicitors**

**In the Supreme Court of the District of Columbia.**  
**Kate Willard Boyd et al. vs. Joseph Parker Camp.**  
 No. 25,974. Equity Docket No. 57.

The object of this suit is to quiet the title in the complainants to original lot numbered twenty (20) in square numbered two hundred and fifty-four (254), in the city of Washington, D. C. On motion of the complainants, it is this 24th day of April, A. D. 1906, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter; otherwise the cause will be proceeded with as in case of default. By the

[Seal] court: **HARRY M. CLABAUGH**, Chief Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 17-3t

**Jos. A. Burkart, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Nellie McLaughlin, Deceased.**  
 No. 13,559. Administration Docket -

Application having been made herein for letters of administration on said estate by Joseph McLaughlin that said letters issue to Amandus F. Jorns, it is ordered, this 23d day of April, A. D. 1906, that David B. McLaughlin, Charles L. Du Rocher, Mary M. McLaughlin, Ernest Salomon, Hazel McLaughlin, and Francis Clarke, and all others concerned, appear in said court on Monday, the 28th day of May, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return

[Seal] day. **WENDELL P. STAFFORD**, Justice. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 17-3t

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, which was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Alice Key Browne, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Tuesday, the 15th day of May, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies, or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 20th day of April, 1906. **THE NATIONAL SAFE DEPOSIT, SAVINGS AND TRUST COMPANY OF THE DISTRICT OF COLUMBIA**, by William D. Hoover, Second Vice-President. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,811. Administration. [Seal.] 17-3t

The Law Reporter Printing Company's office is now the cleanest, most comfortable and best conducted one in the city of Washington, having a head for every department of the business. It will be kept so, in order that the public may be expeditiously served.

**Legal Notices.****W. H. Sholls, Attorney**

**In the Supreme Court of the District of Columbia.**  
**Katharine Herrmann v. The Unknown Heirs, Alienees, and Devisees of John Harrison et al.** Equity No. 26,238.

The object of this suit is to perfect the title of the complainant to that part of original lots 10 and 11, in square 877, in the city of Washington, District of Columbia, described as follows: Beginning at the southeast corner of said original lot 10 and running thence west 3 feet, thence north 88 feet 6 inches, thence east 25 feet to a public alley, thence south, on the line of said alley, 8 feet 10 inches, thence west 7 feet, thence south 18 feet to lot 8, thence west 15 feet to the intersection of the dividing line between lots 9 and 11, and thence south 86 feet 8 inches to the place of beginning. On motion of the complainant it is this 2d day of May, A. D. 1906, ordered that the defendants, the unknown heirs, devisees, and alienees of John Harrison, deceased, and the unknown heirs, alienees, and devisees of Albert B. Norton, trustee, deceased, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of forty days from the first publication of this order, good cause therefor having been shown to the satisfaction of the court; otherwise this cause will be proceeded with as in case of default; provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said return day.

[Seal] **WENDELL P. STAFFORD, Justice.** A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 18-St

**M. J. Keane, Solicitor**

**In the Supreme Court of the District of Columbia,**  
**Holding Equity Court.**

**Michael McDonnell, Complainant, v. The Unknown Heirs, Alienees, and Devisees of William Wham, William Stewart, John Ridgeway, Defendants.** In Equity, No. 25,721.

The object of this suit is to declare the title to lots 13, 14, 15, 18, 19, 20, and 21 of Brawner's subdivision of original lots 17 and 18, in square 1277, as the same is known and described on the ground plan of plat of city of Washington, District of Columbia, to be good in fee simple in the complainant by adverse possession. On motion of the complainant, by Michael J. Keane, his solicitor, it is, this 10th day of November, 1905, ordered that the defendants, the unknown heirs, alienees, and devisees of William Wham, William Stewart, and John Ridgeway, and each of them, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of the period of publication hereinafter described; otherwise this cause will be proceeded with as in case of default. Good cause having been shown, it is not necessary that this order should be published for a longer period than herein required. This order shall be published in The Law Reporter and The Washington Post once a week for four successive weeks before the first rule day occurring after [Seal] the day of the first publication. **THOS. H. ANDERSON, Justice.** A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 18-St

**Gordon & Gordon, Attorneys**

**In the Supreme Court of the District of Columbia.**  
**Edward Shoemaker v. William L. Shoemaker et al.** Equity, No. 24,990. Docket 55.

The object of this bill is to make sale of the tract of ground, in the District of Columbia, known as the "Quaker Burying Ground," and distribute the proceeds amongst the heirs of Jonathan Shoemaker, deceased. On motion of the complainant, it is this 2d day of May, 1906, ordered that the defendants, Julian Shoemaker, Caroline Jack, George A. Shoemaker, Adeline Shoemaker, Rachel Shoemaker, Ellen Lukens, H. Frank Davis, A. B. Davis, Charles G. Davis, John M. Davis, Samuel B. Davis, and Isaac L. Holmes, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star prior to said return day.

[Seal] **HARRY M. CLABAUGH, Chief Justice.** A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 18-St

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**Legal Notices.****Thos. Walker, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of George W. Morgan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of April, 1906. **MARY E. MORGAN, 800 2d st. S. W.** Attest: **WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 13,508. Administration. [Seal.] 18-St

**Lambert & Baker, Attorneys**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Bridget Gleason, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of April, 1906. **WILTON J. LAMBERT, 410 5th st. N. W.** Attest: **WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 9880. Administration. [Seal.] 18-St

**John J. Brosnan, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Ellen Crumly, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of May, 1906. **JOHN H. BRADLEY, 443 7th st. S. W.** Attest: **WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 13,619. Administration. [Seal.] 18-St

**Alex. H. Bell, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Katharine B. Sullivan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 30th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 30th day of April, 1906. **JOHN J. SULLIVAN, 87 N. Y. ave.; DANIEL F. SULLIVAN, 1400 N. Cap. st.** Attest: **WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 13,617. Administration. [Seal.] 18-St

**Wilson & Barksdale and Burton Macafee, Attorneys**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Ann E. Coates, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 1st day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 1st day of May, 1906. **ANNIE C. GUTHRIE, 1215 8 st. N. W.; MARY TERESA SPALDING, 2907 O st. N. W.** Attest: **WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 11,532. Administration. [Seal.] 18-St

**Legal Notices.**

[Filed May 2, 1906. J. R. Young, Clerk.]

**Arthur G. Bishop, Joseph N. Saunders, Attorneys**  
**In the Supreme Court of the District of Columbia.**  
**Terrence J. McMahon v. John Sayle.**  
 Equity 26,190. Doc. 58.

The object of this suit is to perfect complainant's title to the west 27 feet front on F street by the full depth thereof of original lot five (5), in square one hundred and three (108), in the city of Washington, D. C. On motion of complainant, by Bishop and Saunders, his solicitors, it is, this 2d day of May, 1906, ordered that the defendant and his unknown heirs, devisees, and assignees, if he be dead, cause his or their appearance to be entered herein on or before the first rule day occurring after the expiration of forty days, exclusive of Sundays and legal holidays, from the date of the first publication of this order; otherwise this cause will be proceeded with as in case of default. This order shall be published in The Washington Law Reporter and The Washington Post once a week for four successive weeks before said return day, sufficient cause having been shown for dispensing with a longer period of publication.

[Seal] By the Court: WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by W. E. Williams, Asst. Clerk. 18-46

**THIRD INSERTION.**

**Walter C. Balderston, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John W. Fawcett, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of April, 1906. ANNA V. FAWCETT, 1327 G st. N. W. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,622. Administration. [Seal.] 17-31

**Joseph R. Fague, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Jonathan Hamilton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of April, 1906. SAMUEL M. TYLER, 1524 5th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,508. Administration. [Seal.] 17-31

**Campbell Carrington, Solicitor**

**In the Supreme Court of the District of Columbia.**  
**Martha M. Proctor, Complainant, v. Montague Proctor,**  
**Defendant; Clara Bailey, Co-respondent. No.**  
**26,868. Equity Docket No. 57.**

The object of this suit is to obtain an absolute divorce upon the ground of adultery. Provided a copy of this order be published once each week for three successive weeks in The Washington Law Reporter and The Washington Times. On motion of the complainant, by her solicitor, Campbell Carrington, it is this 25th day of April, A. D. 1906, ordered that the defendants, Montague Proctor and Clara Bailey, cause their appearances to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default.

[Seal] By the court: HARRY M. CLABAUGH, Chief Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 17-31

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W.

**Legal Notices.**

**Burton T. Doyle, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Justina Lauer, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 20th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 20th day of April, 1906. BURTON T. DOYLE, 622 F st. N. W.; WILLIAM P. C. HAZEN, 511 E. Cap. st. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,510. Administration. [Seal.] 17-31

**W. F. Mattingly, R. Ross Perry & Son, and John B. Lerner, Solicitors**

**In the Supreme Court of the District of Columbia.**  
**Kate Willard Boyd et al. vs. Joseph Parker Camp.**  
 No. 25,974. Equity Docket No. 57.

The object of this suit is to quiet the title in the complainants to original lot numbered twenty (20) in square numbered two hundred and fifty-four (254), in the city of Washington, D. C. On motion of the complainants, it is this 24th day of April, A. D. 1906, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter; otherwise the cause will be proceeded with as in case of default. By the

[Seal] court: HARRY M. CLABAUGH, Chief Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 17-31

**Jos. A. Burkart, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Nellie McLaughlin, Deceased.**  
 No. 13,550. Administration Docket —

Application having been made herein for letters of administration on said estate by Joseph McLaughlin, that said letters issue to Amandus F. Jorss, it is ordered, this 23d day of April, A. D. 1906, that David B. McLaughlin, Charles L. Du Rocher, Mary M. McLaughlin, Ernest Salomon, Hazel McLaughlin, and Francis Clarke, and all others concerned, appear in said court on Monday, the 28th day of May, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return

[Seal] day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 17-31

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, which was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Alice Key Browne, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Tuesday, the 15th day of May, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies, or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 20th day of April, 1906. THE NATIONAL SAFE DEPOSIT, SAVINGS AND TRUST COMPANY OF THE DISTRICT OF COLUMBIA, by William D. Hoover, Second Vice-President. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,811. Administration. [Seal.] 17-31

The Law Reporter Printing Company's office is now the cleanest, most comfortable and best conducted one in the city of Washington, having a head for every department of the business. It will be kept so, in order that the public may be expeditiously served.

**Legal Notices.****Wilson & Barksdale, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Kate Ross, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of April, 1906. FRANK E. GIBSON, 929 1st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,244. Administration. [Seal.] 17-3t

**Wilson & Barksdale, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Charles H. Smith, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of April, 1906. DAVID W. SHELLAND, Worcester, N. Y. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,385. Administration. [Seal.] 17-3t

**J. S. Easby-Smith, Attorney**

In the Supreme Court of the District of Columbia.  
Grayson L. Thornton, Plaintiff, v. Claude G. Stephenson and Harry L. Wheatley, Defendants.  
At Law, No. 49,418.

The object of this suit is to recover four hundred and twenty-five dollars upon three certain promissory notes and to have judgment of condemnation of certain property of the defendant, Claude G. Stephenson, levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, ordered, this 26th day of April, 1906, that the defendant, Claude G. Stephenson, appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation

[Seal] should not be had; otherwise the suit will be prosecuted as in case of default. By the Court: WRIGHT, Justice. Test: John R. Young, Clerk. 17-3t

**R. Ross Perry and Son, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the State of Illinois, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William Hall Fory Blodgett, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of April, 1906. WILLIAM B. COLT, 452 Federal Bldg., Chicago, Ill. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,624. Administration. [Seal.] 17-3t

**FOURTH INSERTION.**

**Hamilton & Colbert, Attorneys  
In the Supreme Court of the District of Columbia.  
The Baltimore and Ohio Railroad Company v. Richard E. Simmes, the Unknown Heirs, Allenees, and Devisees of Richard E. Simmes. Equity. No. 26,049.**

The object of this suit is to declare the title of the complainant to the real estate situate in the city of Washington, District of Columbia, known as all of original lot numbered fourteen (14) in square numbered six hundred and eighty-one (681), except so much of said lot as was conveyed to the Baltimore and Ohio Railroad Company by Nicholas Acker and wife, by deed dated September 12, 1873, and recorded September 20, 1873, in liber 728, folio 463, of the land records of the District of Columbia, to be good in fee simple, by reason of adverse pos-

**Legal Notices.**

session, and to declare the title of complainant to be good in it of record, and to perpetually enjoin the defendants from asserting any title to said real estate. On motion of the complainant, by its solicitors, Hamilton & Colbert, it is, by the court, this 16th day of April, A. D. 1906, ordered that the defendants, Richard E. Simmes, and the unknown heirs, allenees, and devisees of said Richard E. Simmes, cause their appearance to be entered herein on or before the first rule day occurring after the fortieth day, exclusive of Sundays and legal holidays, after the date of the first publication of this order; otherwise this cause will be proceeded with as in case of default. The court is satisfied, upon good cause shown, as appears by the affidavit filed herein, that it is not necessary that this order should be published at least twice a month during the period of not less than three months. This order shall be published at least once a week for four successive weeks before said return day; provided that said order shall be published twice a month in the month of April, 1906, and twice a month in the month of May, 1906. This order shall be published in The Washington Law Reporter, the court not deeming it necessary that the same should be published in any other paper, and no other paper having been selected by the parties. WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 16-4t

**SIXTH INSERTION.****P. H. Marshall, Solicitor**

In the Supreme Court of the District of Columbia.  
Henry B. Hutchinson v. Israel Little et al.  
Equity No. 26,056.

The object of this suit is to establish the title of complainant, Henry B. Hutchinson, in fee simple, by the adverse possession of himself and those under whom he claims, to original lot numbered twenty-six (26), in square numbered nine hundred and fifty (950), in the city of Washington, District of Columbia. On motion of the complainant, by his solicitor, P. H. Marshall, it is, by the court, this 7th day of March, A. D. 1906, ordered that the defendants, Israel Little, if he be living, and the unknown heirs, devisees, and allenees of Israel Little, if he be dead, cause their appearance to be entered herein on or before the first rule day occurring three months after the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order to be published for three months, once a week for three successive weeks for the first month, and twice a month for each of the two succeeding months in The Washington Law Reporter and The Washington Times. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 16-2t

mar. 9-16-23, apr. 13-20, may 11-18

**SEVENTH INSERTION.****T. Percy Myers and Benjamin S. Minor, Solicitors**

In the Supreme Court of the District of Columbia.  
Tillotson E. Brown, Complainant, v. the Unknown Heirs, Allenees, and Devisees of William B. Hurst, Deceased, Defendants. In Equity, No. 25,964.

The object of this suit is to establish title by adverse possession of the complainant to part of lot numbered one (1) in square numbered three hundred and ninety-seven (397), to wit: Beginning at a point on Eighth street northwest, twenty-nine (29) feet and two (2) inches north of the southeast corner of lot numbered one (1) in square numbered three hundred and ninety-seven, and running thence north along said Eighth street thirteen (13) feet and eleven (11) inches, thence west ninety-nine (99) feet and four (4) inches, thence south thirteen (13) feet and eleven (11) inches, thence east ninety-nine (99) feet and four (4) inches, to the place of beginning. On motion of the complainant, by his solicitor, it is, by the court, this 8th day of February, A. D. 1906, ordered that the defendants, the unknown heirs, allenees, and devisees of William B. Hurst, deceased, cause their appearance to be entered herein on or before the first rule day occurring after three months from the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published for three months, once a week for three successive weeks for the first month, and twice a month for each of the two succeeding months, in The Washington Law Reporter and The Washington Post. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 16-2t

feb 16, 23; mar 2; apr 6, 13, may 4, 11



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WASHINGTON, D. C. - - - - MAY 18, 1906

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### Tender—Payment Into Court Not Affected by Subsequent Amendment of Pleadings.

In *Mann v. Sprout*, decided May 8, 1906, by the Court of Appeals of New York, and reported in the *New York Law Journal*, it is held that a tender by the defendant of the amount claimed to be due to the plaintiff, and, on refusal, the unconditional payment thereof into court pursuant to its order, is equivalent to a payment directly to the plaintiff. The court, under such circumstances, holds it as the plaintiff's money, and it has no power because of a subsequent amendment of the pleadings changing the issue, to authorize its withdrawal by the defendant. The court, in an opinion by Vann, J., discusses the effect of a tender and payment into court as follows:

When a debt is due, a tender of the entire amount with no condition attached, and the payment thereof into court pursuant to its order, even if not accepted, is an absolute transfer of the money to the creditor. When the sum tendered is less than the amount due, it is a conclusive admission of the indebtedness to the extent of the tender, regardless of the final result of the action, and not only does the party paying it into court lose all right to it, but the court itself has no power to make an order in the same action, which, in effect, re-

transfers the title. Relief from mutual mistake, or mistake on one side and fraud on the other, can be had, if at all, only in an independent action brought for the purpose. Even if the verdict is for a less amount, or for nothing at all, the title has irrevocably passed and the result of the action has no effect thereon. The same rule prevails whether the action is in tort or on contract, for in either case the money paid into court by the defendant pursuant to a tender belongs to the plaintiff in any event. Refusal of the creditor to accept, or the death of either party, or the commencement of another action, does not change the effect, for the title passes by operation of law the same as if the tender had been accepted. The transfer is complete and can not be changed without consent, or a decree in equity, from the moment the court takes control of the money. Acceptance by the court for the plaintiff has the same effect as acceptance by the plaintiff himself. Deposit in a bank, or with a third party, without the order of the court, does not prevent a withdrawal if there has been no acceptance, but the action of the court in a suit pending before it, whereby at the request of one party it takes money into its possession for the benefit of the other, has the same effect as actual acceptance, and ipso facto vests the title in him. The custody of the law is the custody of the plaintiff, and the action of the defendant operates as a final and irrevocable transfer. If the plaintiff goes on with the action and is nonsuited, or the verdict is against him or is for a sum less than the amount tendered and paid into court, still the defendant can not take the money back, for it is not his, but has passed irrevocably to his adversary. If thereafter the fund is lost or stolen by the county treasurer, the loss falls on the plaintiff, not on the defendant, who has no further interest in the money (*Taylor v. Brooklyn El. R. R.*, 119 N. Y., 561; *Wilson v. Doran*, 39 Hun. 88; 110 N. Y., 101; *Becker v. Boon*, 61 N. Y., 317; *Beil v. Supreme Council, Am. L. of H.*, 42 App. Div., 168; *Murray v. Bethune*, 1 Wend., 191; *Slack v. Brown*, 13 Wend., 390; *Dakin v. Dunning*, 7 Hill, 30; *Bank of Columbia v. Southerland*, 3 Cow., 336; *Malcolm v. Fullerton*, 2 Durn. & E., 645, 648; 2 *Parsons on Cont.*, 9th ed., 789; 2 *Whart. on Cont.*, sec. 976; 1 *Beach on Cont.*, sec. 331).

Mr. CHARLES G. McROBERTS, a member of the bar of this District, was married on the evening of April 26, 1906, to Miss Goodwin, of this city, and has removed to the city of Chicago, where he will henceforth make his home, becoming a member of the firm of Coburn & McRoberts. Mr. McRoberts, though engaged in practice in this District for a comparatively brief period, achieved good success in his profession. He has a host of friends among the members of the bar, who will, regretting the severance of his relations with them, wish him abundant success in his new field, and are glad in the happiness and success that has come to him.



## Court of Appeals of the District of Columbia.

WILLIAM F. HOLTZMAN ET AL., APPELLANTS,

v.

IRWIN B. LINTON, EXECUTOR, ETC.

EQUITY; FRAUD; CANCELLATION OF INSTRUMENTS; COMPROMISE AGREEMENT; FIDUCIARY RELATIONS.

1. The weight given and favor shown to a compromise agreement in settlement of disputes concerning mutual rights and obligations, depends not only upon the apparent reasonableness of the claims asserted and good faith of the party making the same and taking a benefit thereby, but also upon the conditions of the parties and their previous relations with each other.
2. If based on contracts and conveyances found to have been made under conditions rendering them invalid, a subsequent compromise agreement, unless made under circumstances showing new considerations and fair dealing, will fall with them.
3. When fiduciary relations exist between grantor and grantee the fiduciary is under a plain moral duty not to put himself in any situation which would tend to excite a conflict between his self-interest and his duty to his client, principal, or obligee of whatsoever nature.
4. In a suit in equity to set aside certain conveyances and also a subsequent compromise agreement confirming such conveyances, where it was shown that a fiduciary relation had for years existed between complainant and defendant, held that even assuming the burden was on complainant to rebut the presumption as to the validity of her conveyances, the evidence for complainant, not overcome but strengthened by that for defendant, was ample to justify a decree canceling the conveyances and compromise agreement and directing that an account be taken.

No. 1617. Decided April 8, 1906.

APPEAL by defendant from a decree of the Supreme Court of the District of Columbia, in Equity, No. 23,908, in suit to cancel certain deeds, etc., and for an injunction. Affirmed.

*Mr. S. T. Thomas, Mr. A. S. Worthington, and Mr. E. Hilton Jackson* for the appellants.

*Mr. Irwin B. Linton, Mr. J. Altheus Johnson, and Mr. George E. Sullivan* for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This suit was begun on April 22, 1903, by Mary Almarolia, to obtain the cancellation of certain deeds, and conveyances in trust, under which William F. Holtzman, Aylett T. Holtzman, and Ella C. Castleman claimed certain interests in, and liens upon, lot 1, in square 241, in the city of Washington; and a compromise agreement of December 10, 1902, purporting to recognize and confirm the interests aforesaid, and to give a lien upon the remaining interest of complainant, to secure certain recited indebtedness. The bill sought also to restrain trustee's sales under certain instruments securing indebtedness on said lot.

Henry F. Woodard, William H. Sholes, Arthur A. Birney, and Willoughby S. Chesley were made formal defendants as trustees named in the several trust instruments sought to be affected. Elihu Root, as Secretary of War, at the time, was made a defendant in order to secure a correction of an official certificate issued by him relating to the release of the title to said lot by the United States, in accordance with an act of Congress providing therefor.

It is unnecessary to recite the averments of the bill, or the answers of the defendants, as

they are indicated by the statement of the evidence. It is sufficient to say that the complainant alleged long-continued fiduciary relations between her and defendant, William F. Holtzman, the entrusting of the management of her affairs to him, and fraudulent representations made to, and impositions practiced upon, her, through which her signature was obtained to the several instruments sought to be canceled. She also prayed for the rendering of an account.

William F. Holtzman answered under oath, denying each and every allegation of fraud and imposition, and claiming that the conveyances were made in good faith for money actually paid, etc. Aylett T. Holtzman and Ella C. Castleman denied all fraud as charged, and alleged that whatever legal title appeared to be in them was for the sole benefit of William F. Holtzman. The defendants, sued as trustees, made formal answers disclaiming any beneficial interests, and submitting themselves to the discretion of the court in the premises. Elihu Root made a formal answer substantially to the same effect.

Mary Almarolia died before the hearing below, and, on suggestion thereof with proof that she had made a will devising and bequeathing her estate in trust to Irwin B. Linton, who was also appointed her executor, the latter was, on September 9, 1904, substituted as party complainant in her stead.

2. The hearing was had in the equity court upon the testimony taken on both sides, and on June 21, 1905, that court entered a decree to the following effect substantially:

(1) That the conveyance of November 13, 1896, to Aylett T. Holtzman be and is hereby vacated and for naught held.

(2) That the conveyance of April, 1896, to William F. Holtzman be and is hereby declared a security merely for whatever expenditures may have been made by him for complainant on account of the said lot.

(3) That the trust deed of November 20, 1902, in favor of Ella C. Castleman for \$970 is reformed and corrected, as also the promissory note therein recited so as to name William F. Holtzman as the beneficiary thereof instead of Ella C. Castleman, reduce the principal to \$150 instead of \$970, and that the matter of interest be treated as hereafter stated.

(4) That William F. Holtzman and Ella C. Castleman are hereby enjoined from causing or permitting the said promissory note of November 20, 1902, or the \$450 or \$500 promissory notes referred to in the bill, to be transferred to any third party.

(5) That the instrument dated November 20, 1902, purporting to be a compromise agreement, be and is hereby vacated and for naught held.

(6) That all of the defendants, excepting Elihu Root, be restrained, until further order of the court, from taking any steps looking to a sale of the said premises under any of the instruments referred to in the bill.

(7) That the defendants, William F. and Aylett T. Holtzman, be declared to hold in trust for complainant all of the right, title, and interest shown to be in them by virtue of the entry made April 15, 1902, in the records of the War Department, and that within five days they shall prepare and execute to Irwin B. Lin-

ton, trustee, a deed conveying the same, in default of which conveyance this decree shall have the same operation and effect as if the said conveyance had been executed conformably to this decree.

(8) That the instrument of May 1, 1891, recorded in liber 2118, folio 347 et seq., of the land records of the District of Columbia, be, and is hereby, vacated.

(9) That defendant William F. Holtzman be perpetually restrained from doing anything under the instrument of date January 15, 1887, recorded in liber 1229, folio 168 et seq., of same land records.

(10) That the defendants, William F. and Aylett T. Holtzman, be and are severally and perpetually restrained and enjoined from making any further claim of ownership in said lot inconsistent with this decree.

(11) That this cause be, and it is hereby, referred to the auditor of this court for a full and complete accounting covering all of the affairs of the fiduciary relationship between Mary Almarolia and defendant William F. Holtzman, taking in the course of such accounting such additional evidence as may be necessary, and charging defendant William F. Holtzman not only with all funds which it is or shall be established by positive and direct evidence that he did receive, but also with all funds which the auditor shall be satisfied from his conduct and the circumstances that he did receive, and all funds which by the exercise of due diligence he would have received; and the auditor is directed to allow defendant William F. Holtzman in such accounting no compensation for his administration, but to charge him with the expense, including necessary and reasonable attorneys' fees, of removing the effects of his administration, and also to charge him with compound interest, with rests for its calculation annually, upon every sum of money found by the auditor to have been received by him for, and withheld from, Mary Almarolia, such compound interest to be charged from the date when it is found that he ought reasonably to have paid the same over to her; and the auditor is further directed in such accounting to take into account, and credit defendant William F. Holtzman, at the proper dates, with the sums of money due from Mary Almarolia under the \$450 and \$500 deeds of trust referred to in the bill of complaint, as also under the reformed and corrected \$150 deed of trust hereinbefore referred to, and under the chattel trust referred to in the bill of complaint, treating defendant William F. Holtzman as the real party in interest under said several trusts in the place and stead of defendant Ella C. Castleman, and allowing no interest upon any of the sums of money from the time when the respective instruments came under the control of defendant William F. Holtzman.

(12) That George E. Sullivan be and is hereby appointed receiver, upon giving bond, to be approved by the court, in the sum of \$500, to collect the rents and manage the affairs of the lot and premises herein involved until the further order of the court.

(13) That the complainant recover of defendant William F. Holtzman all costs herein to date, and have execution therefor as at law.

(14) That jurisdiction of this cause be and is

hereby retained for the entry of the further proper orders upon the coming in of the report of the auditor.

William F., Aylett T. Holtzman, and Ella C. Castleman have appealed from this decree.

3. In our view of the issues involved on this appeal no useful purpose would be served by reviewing and discussing at length the confused and conflicting mass of testimony in this case, which occupies more than six hundred pages of the printed record. Much is utterly irrelevant; much the result of unnecessary repetition; and much relates particularly to matters referred to the auditor, who is charged with reporting a true statement of the accounts between the parties, and before whom additional testimony bearing thereon may be taken. We shall content ourselves, therefore, with stating the particular facts which we regard as established by the evidence, and which will require considerable space.

(1) The complainant, Mary Almarolia, was a negro whose chief occupation between the year 1883 and the time of her death was conducting an eating and boarding house in the city of Washington. She was the sole heir at law of her father, Michael Shiner, and was a childless widow. She had learned to read and write, and was regarded as an intelligent woman of her class. Some time between 1896 and 1900 she fell in alighting from a street-car and sustained injuries as a result of which she could do no more than sign her name in an awkward manner. Before 1900 her eyesight began to fail from what an oculist called incipient cataract of each eye. The oculist of the Lutheran Eye Infirmary examined her on April 6, 1900, and recorded her as four-sixtieths in each eye—the equivalent of one-fifteenth vision. She was almost blind, but might see well enough to sign her name. Her eyesight became no better and probably grew worse. Aside from the accident before referred to she had good health and strength, and was actively engaged in conducting her business until in December, 1902, she had her foot pierced by a nail, and just before December 16, 1902, the date of the execution of the compromise agreement, she was confined to her bed and threatened with blood-poisoning. On that morning William F. Holtzman came with a notary to procure her signature, and had to leave the room while the attending surgeon opened and drained pus sacks in her foot. She took no anæsthetic and was suffering great pain. She had aseptic fever, and, in the opinion of the surgeon, was in no condition to transact business.

(2) Michael Shiner, the father of complainant, claimed the lot in controversy under a deed from one Todd, in 1887, and recorded in 1888. He took possession, filled the same at considerable expense, erected a house thereon in which he lived and died. His possession and that of his daughter, who succeeded him therein, was open, exclusive, uninterrupted, and adverse to all the world, for more than twenty years. The title had never passed out of the United States, and complainant attempted to obtain an act of Congress recognizing the same. An act authorizing the Secretary of War to extend the title, among others, was finally enacted March 3, 1899 (30 Stat. 1346). This lot was entered upon

the tax-rolls as early as 1890 as having an area of 8792 square feet, valued at \$4,396.

(3) William F. Holtzman was an agent for the sale of real estate and the lending of money thereon, and claimed to be a lawyer. Aylett T. Holtzman, his brother, was an assistant and probably interested. Ella C. Castleman was his sister-in-law. Whatever legal title to the lot was lodged in them was held for him, and they admit him to be the real owner of the same.

(4) Michael Shiner's estate was administered upon by one Little in 1883, and consisted chiefly of a claim against the United States depending in the Court of Claims. Complainant entrusted the management of her property interests to William F. Holtzman, and placed implicit confidence in his capacity and integrity. On May 1, 1884, she gave a written order to Little to pay to said Holtzman all money payable to her as distributee of said estate, and he received thereon \$124.64 on July 5, 1884.

(5) On January 15, 1887, Holtzman obtained from complainant a deed of trust upon the lot to secure two notes therein recited of \$180 and \$385, respectively. (How much money was in fact advanced by him, and how much she may have repaid, are among the questions referred to the auditor. It may be added, however, that she seems to have fully paid off the \$180 note made to one Koomes to secure the rent of a house occupied by her.)

Holtzman advertised the lot for sale, and complainant procured one John G. Slater to save her property. Slater paid the cost of advertising the sale and had Holtzman assign his interest to him. Slater had the complainant to make him a conveyance of the lot, reciting a consideration of \$5,000, but the same was not recorded. Slater seems to have made some futile attempts to have Congress recognize complainant's title. Slater became involved in the winter of 1895, and entered into negotiations with Holtzman for the retransfer of the claim. The notes, however, had remained in the possession of Holtzman during the time. On February 11, 1896, Slater procured the signature of complainant to a receipt purporting to have received from him "\$800 at various times, and also the rents collected by said Slater, which said \$800 is due said Slater partly in open account and notes bought from William F. Holtzman through her solicitation and are all right, and this sum is found to be due said Slater at the present time on lot 1, square 946." On March 6, 1896, "for value received," he transferred all his interest in the above to William F. Holtzman. He also gave him the unrecorded deed. Holtzman claims to have paid Slater \$800 for said claim, but the testimony is anything but clear as to that. Whatever money he paid Slater, however, was out of a fund belonging to complainant at the time, for it appears clearly that on or before that date Holtzman received the net sum of \$883 from Little, being the final balance due to complainant on settlement of his account as administrator. Holtzman concealed the fact of this collection from complainant, who learned it from the attorney who represented her interests, though employed by Holtzman for that purpose.

(6) During the entire time of his agency for complainant, W. F. Holtzman kept no books

and made no entries showing his various transactions with her and moneys received or advanced, nor did he ever render her an account. That he advanced some money to her from time to time there is no doubt. Complainant admits the receipt of sums at various times, and offers to account therefor. For all items of advances claimed Holtzman was compelled to rely upon his memory, which was shown to be defective. (These matters are included in those referred to the auditor.) Aylett T. Holtzman produced a partial account relating to rents collected by him, and payments made, after W. F. Holtzman claimed to own a half interest in the lot. This appears inaccurate, in that complainant is charged with the entire expense of repairs, some of which, moreover, are shown to have been paid for by her in person.

(7) On April 11, 1896, the lot was sold at tax sale and purchased by William F. Holtzman in the name of Ella C. Castleman, to whom the deed was subsequently made by the Commissioners of the District. The taxes amounted to \$165.55. Complainant had no knowledge of this transaction at the time. So far as the record discloses, this sale was void. As the title to the lot was in the United States it is not apparent that it could have been assessed for taxes at all, and, moreover, the assessment seems not to have been made against complainant, but one L. O. Williamson, who does not appear otherwise as having or claiming any interest in the property.

(8) On April 18, 1896, William F. Holtzman obtained from complainant a deed, upon a recited consideration of ten dollars, conveying to him a one-half undivided interest in the lot, which was recorded June 2, 1896. Whatever the means used to procure this deed, it is evident that it was not understood by complainant as intended to convey the same absolutely. As held by the court below it can be regarded as nothing more than a security for any money then actually due by the complainant, the ascertainment of which has been referred to the auditor.

(9) On November 13, 1896, Aylett T. Holtzman procured from complainant a deed, upon a recited consideration of ten dollars, conveying to him an undivided one-fourth interest in said lot. No consideration is shown to have been paid for this conveyance, and the grantee admits that he took it for William F. Holtzman as the real owner. During this time the Holtzman brothers were trying to secure the passage of an act of Congress securing the title to the lot to the complainant.

(10) On November 3, 1899, Congress passed an act authorizing and directing the Secretary of War to correct the records of his department in respect of a number of lots mentioned, including the one in question, "upon the filing by an actual occupant of any of the lots mentioned . . . sufficient proof that the said occupant or the party under whom he claims has been in actual possession of the said lot or lots for an uninterrupted period of twenty years, so that said records shall show the title to said lots to be in the said occupant." 30 Stat., 1346.

Prior to the enactment, namely, March 10, 1898, complainant subscribed and swore to a petition addressed to Congress to secure her title, in which it was represented that she had

previously conveyed an interest in said lots to William F. and Aylett T. Holtzman. This was signed by complainant (at request of said Holtzmans, as she had signed all previous papers presented to her by them), who does not appear to have understood that she was thereby ratifying or confirming any actual interest of theirs in said lot. On December 1, 1901, an attorney employed by Holtzman wrote a letter to the Secretary of War, as attorney for Mary Almarolia, inclosing papers referring to the title, and asking that the records of the department might be corrected so as to show title to said lot in Mary Almarolia, William F. Holtzman, and Aylett T. Holtzman, "as their interests may appear," under said act of Congress. With this was filed an affidavit signed by complainant and setting up the possession of Michael Shiner and herself, and stating that she had conveyed a one-half interest to William F. Holtzman and a one-fourth interest to Aylett T. Holtzman. The War Department required a quitclaim of other outstanding interests, and in compliance therewith Holtzman presented a quitclaim deed from Ella O. Castleman, dated January 8, 1902, releasing her interest under the tax deed before mentioned to Mary Almarolia, William F., and Aylett T. Holtzman. On April 15, 1902, the War Department corrected the records so as to show the title to be in complainant and the two Holtzmans, and issued the necessary certificate to that effect, which went into the possession of William F. Holtzman.

(11) On April 2, 1902, complainant executed a mortgage with power of sale conveying certain chattels to said Holtzmans to secure \$200 alleged to have been loaned by Ella O. Castleman. As this does not affect the title it is unimportant to consider the evidence relating to it, as all questions concerning it are included in the reference to the auditor.

(12) On October 2, 1902, complainant borrowed \$500 of A. A. Birney and conveyed the entire interest in the lot to Woodard, trustee, to secure the same. On October 21, 1902, she borrowed \$450 from S. C. Mills, and made another conveyance to Wm. H. Sholes, trustee, to secure the same. These instruments were made in good faith, and complainant admits the indebtedness thereunder. Both notes were subsequently purchased by William F. Holtzman for himself, but in the name of Ella O. Castleman, who had no actual knowledge of the transaction. In the name of Ella O. Castleman, Holtzman directed Sholes, trustee, to sell under said second deed of trust. Sale was made on March 28, 1903, of 22-60 of said lot, and the same was bid in by one Works, by direction of Holtzman, in the name of Ella O. Castleman. The sale was not perfected, and the same is enjoined by the decree passed below, pending the report of the auditor and further order thereon. (This indebtedness is included in the accounts ordered to be taken by the auditor.)

(13) Until the fall of 1902, the confidence of complainant in Holtzman had remained unimpaired. Her suspicions seem first to have been aroused by information from another person of the collection made by him of the \$883 due her from the administrator of her father's estate. She began inquiries and demanded an account of her agent's doings. She then retained an at-

torney, who conferred with Holtzman and evidently in good faith gave credence to his statements. The result was that a compromise agreement was prepared for her signature on November 20, 1902. This agreement recited the conveyance by complainant to William F. Holtzman of a one-half interest in said lot, and to Aylett T. Holtzman of a one-fourth interest by reference to the deeds. Further reciting a dispute between them, it was agreed that the remaining interest of complainant was 22-60 of the said lot, instead of one-fourth, and that William F. Holtzman has the just right to receive from Mary Almarolia the following sums: the proportionate part of taxes paid by Holtzman in the years 1896, 1897, 1898, 1899, 1900, 1901, and 1902, \$250.36; advance of money by Holtzman to Mary Almarolia in excess of her proportionate part of net rentals of said premises and for interest thereon from November 1, 1901, \$295.75; for money advanced by him to Mary Almarolia and now in part secured by a chattel deed of trust, \$250. For the aggregate of said sums said Almarolia is to execute a proper deed of trust upon her equitable interest in said 22-60 of the said lot. All other claims of either party are canceled and surrendered.

This instrument was presented to complainant, who refused to execute the same. Thereupon her attorney withdrew from the matter.

(14) Thereafter complainant sustained an injury to her foot which confined her to her bed. On December 11, 1902, immediately after the performance of an operation upon her foot for the removal of the pus sacks, as hereinbefore related, and while she had fever and was suffering great pain, Holtzman called upon her with a notary and demanded her signature to said agreement. She was in no condition to transact business at the time, and asked a postponement, which he declined. In addition to the sum contained in the recitals of the agreement he offered her a loan of \$150, of which she was in great need. She was propped up in bed, and her attending nurse and friend held her hand or arm and directed it in making her signature. In the same way she executed the trust deed conveying the 22-60 of the lot to Birney and Chesley, trustees, to secure an indebtedness to Ella O. Castleman of \$970, reciting that the same was for money loaned and advanced in part to pay taxes, and was evidenced by a note for said sum executed to said Castleman or order and payable in five months. This was made up of the sums mentioned in the agreement and the \$150 then paid. Ella O. Castleman had nothing to do with the transaction, and William F. Holtzman was the real beneficiary. The money was left in the hands of the nurse for the complainant. Shortly after recovering sufficiently to attend to her affairs, complainant retained her present attorney, and this suit was the result.

(15) In addition to the fact that Wm. F. Holtzman acted as the agent of Mary Almarolia in the matter of renting and securing title to the lot, and as her attorney in the matter of the administration of her father's estate, she assigned to him certain other claims for collection. She took no receipts from him, and he took none from her, for money advanced. Her trust and confidence in him are further shown by the fact,

testified to by him, that, on September 27, 1901, when she obtained a loan of \$25: "I wrote her will, when she said the doctor said she was not going to live long, and she wanted to put the whole thing in my hands, so she could cut out some of her children who had been ungrateful to her." The contents of this will were not proved, and it was necessarily revoked by the will of March 11, 1904, of which Irwin B. Linton, the appellee, is the executor.

(16) According to the testimony of several real estate dealers, the lot in question has for two years past been worth from \$6,500 to \$7,500.

4. In the application of the established principles of equity to the facts before recited, we need not enter upon a discussion of the weight of evidence ordinarily necessary to warrant the rescission of deeds or agreements of compromise, made between parties under no special obligations to each other, on a bill charging the practice of fraud and imposition in the procurement of their execution. The weight ordinarily given and the favor shown to a compromise agreement in settlement of disputes concerning mutual rights and obligations, depends not only upon the apparent reasonableness of the claims asserted, and good faith of the party making the same and taking a benefit thereby, but also upon the conditions of the parties and their previous relations with each other.

If based on contracts and conveyances found to have been made under condition rendering them invalid, a subsequent compromise agreement, unless made under circumstances showing new considerations and fair dealing, will fall with them.

Nor is it important to consider whether the circumstances indicating the considerations entering into the agreement, or the disparity between the parties, intensified by the particular condition of the complainant at the time that the execution was obtained, are sufficient to support the decree of cancellation under the doctrine governing the case of *Allore v. Jewell*, 94 U. S., 506. The proof, as we have seen, shows that the parties had been in fiduciary relations for many years. The principal defendant, William F. Holtzman, was an experienced real estate dealer and manager, and seems, at one time, to have been admitted to the District bar. Well acquainted with the complainant, he voluntarily assumed the management of her affairs and the conservation of her interests, not only in respect of the property involved in this suit, but of other matters also. The complainant, on the other hand, was a negro woman, unfamiliar with the transaction of business of the character entrusted to her agent and attorney, who had implicit confidence in his capacity and integrity. She adopted his suggestions, and executed all papers submitted to her by him without suspicion or question. Being needy and improvident, she asked for and obtained advances of money from him, and his apparent generosity tended to increase her confidence and trust. During the same time, he received money belonging to her, rendering no account, taking and giving no receipts, and keeping no books showing regular entries of money received and paid out, as he was in duty bound to do. The first transaction by which he

ant's lot was the tax sale in April, 1896. So far as the record discloses, these taxes were neither due by her nor a valid charge upon her title, and the purchase under sale therefor, if not expressly fraudulent, was, at least, ill-advised and negligent.

In considering the character and effect of the subsequent instruments, whereby defendant obtained absolute conveyances of three-fourths of the lot, and a lien upon complainant's remaining interest, it must be remembered that when fiduciary relations exist between grantor and grantee the fiduciary is under a plain moral duty not to put himself in any situation which would tend to excite a conflict between his self-interest and his duty to his client, principal, or obligee of whatsoever nature. *Michoud v. Girod*, 4 How., 502, 554; 2 Pom. Eq. Sec., 856.

As has been well said by Lord Chancellor Ohelmsford, "The jurisdiction exercised by courts of equity over the dealings of persons standing in certain fiduciary relations has always been regarded as one of a most salutary description. The principles applicable to the more familiar relations of this character have been long settled by many well-known decisions, but the courts have always been careful not to fetter this useful jurisdiction by defining the exact limits of its exercise. Whenever two persons stand in such a relation that, while it continues, confidence is necessarily reposed by one, and the influence which naturally grows out of that confidence is possessed by the other, and this confidence is abused, or the influence exerted to obtain an advantage at the expense of the confiding party, the person so availing himself of his position will not be permitted to retain the advantage, although the transaction could not have been impeached if no such confidential relation had existed." *Tate v. Williamson*, 2 Oh. App., 55.

In discussing the obligations arising out of fiduciary relations where there is no intentional concealment, no misrepresentation, no actual fraud, Mr. Pomeroy says: "The doctrine to be examined arises from the very conception and existence of a fiduciary relation. While equity does not deny the possibility of valid transactions between the two parties, yet because every fiduciary relation implies a condition of superiority held by one of the parties over the other, in every transaction between them by which the superior party obtains a possible benefit, equity raises a presumption against its validity, and casts upon that party the burden of proving affirmatively its compliance with equitable requisites, and of thereby overcoming the presumption. One principle underlies the whole subject in all its applications; and this principle may be stated in a negative and in an affirmative form. Its negative aspect can not be better expressed than in the following language of a most able judge in a recent decision (*Wood, V. C.*, in *Tate v. Williamson*, L. R., 1 Eq., 528, 536), 'The broad principle on which the court acts in cases of this description is that wherever there exists such a confidence, of whatever character that confidence may be, as enables the person in whom confidence or trust is reposed to exert influence over the person trusting him, the court will not allow any transaction between the parties to stand, unless there has been the

fullest and fairest explanation and communication of every particular resting in the breast of the one who seeks to establish a contract with the person so trusting him." 2 Pom. Eq., sec. 956; *Moran v. Daly*, 12 App., D. C., 137, 146: 26 Wash. Law Rep., 26.

The Supreme Court of the United States has always maintained the doctrine that the mere existence of confidential relations, as in the case of parent and child and some others of a similar nature, does not shift the burden of proof to the superior party to show the validity of the transaction. *Towson v. Moore*, 173 U. S., 17, 19; see, also, *Murray v. Hilton*, 8 App. D. C., 281, 284: 24 Wash. Law Rep., 262. At the same time it has also been said that "Gifts procured by agents and purchases made by them from their principals should be scrutinized with a close and vigilant suspicion." *Ralston v. Turpin*, 129 U. S., 663, 675, and cases before cited.

Whether the rule of presumption declared in such cases can be extended to the express fiduciary relations shown to have existed in this case is, under the facts heretofore recited, unimportant. Assuming that the burden was upon the complainant to rebut the presumption of the validity of her conveyances, her evidence, unless overcome by that of the defendants, was ample to justify the decree for cancellation and the taking of an account. Instead of being overcome or even weakened by the evidence on behalf of the defendants, the case of complainant was strengthened by certain material facts elicited from the defendant and certain of his witnesses. Having kept no account of his advances to, and on account of, the complainant, he was unable to make a satisfactory explanation of the consideration for the first conveyance of the half interest in the lot. That interest, which he claimed to have purchased for \$1,175 was worth, as he well knew, not less than \$2,500 at the time, and it was proved beyond question that shortly prior to the date of the conveyance he had collected \$883 for her from the administrator of her father's estate. When compelled to admit the receipt of this money he was unable to explain its disposition.

It is unnecessary to refer to other slighter circumstances tending to show the abuse of the trust reposed in him. This conveyance, it will be remembered, was not canceled outright, but declared to constitute a lien merely for any money that complainant may in fact have owed him at the time.

5. The decree has been further objected to because of the direction to the auditor, in taking the account, to charge the defendant with all funds which by due diligence he would have received on account of complainant, as well as with compound interest upon all sums proven to have been actually received, from the respective dates of receipt.

It does not plainly appear to what the first item of this directed charge extends. In so far as it may embrace rents of the property, if any, lost by negligence during the agency therefor, it is clearly right. If intended to include also the matter of the collection of certain claims assigned to him for the purpose, the evidence relating thereto is not sufficient to warrant the charge. The auditor is authorized, however, to hear additional evidence, if

necessary to the statement of a true account between the parties. Any item of charge on either account that he may allow will be separately stated, and may hereafter be made the ground of an exception to the auditor's report. In all other respects, the decree as rendered will be affirmed with costs, and it is so ordered.

Affirmed.

### Supreme Court of the District of Columbia.

THOMAS W. FOWLER ET AL., PLAIN-  
TIFFS,

v.

DAVID J. TAVENNER.

#### LANDLORD AND TENANT; TERMINATION OF TENANCY; NOTICE TO QUIT.

1. Where a lease provides that the lessee shall be entitled to occupy the premises until such time as the owner, his heirs or assigns, shall desire the same or part thereof for building purposes, notice from the owner to the lessee that he desires the premises for building purposes has the effect of terminating the tenancy forthwith, without any notice to quit being given; and on refusal of the lessee to surrender the premises in compliance with such request, the lessor may at once sue for possession thereof.
2. The effect of such provision in the lease is to create a limitation upon the estate of the tenant, and not a condition by which the tenancy could be terminated.
3. The fact that the rent was to be paid monthly, in advance, did not fix the duration of the term; but where the notice was given by the owner during a month for which the rent was paid in advance, the tenancy would cease, and the lessor and lessee would have to adjust their accounts according to the number of days the lessee had actually occupied the premises.

No. 48,126, Law. Decided May, 1906.

HEARING on an agreed statement of facts in a case appealed from a justice of the peace. Judgment for plaintiff.

*Messrs. Wilson & Barksdale* for plaintiffs (appellees).

*Mr. Wm. McK. Clayton* for defendant (appellant).

Mr. Justice BARNARD delivered the opinion of the Court:

This is a suit brought in the court of a justice of the peace in this District, under the landlord and tenant law, by the firm of Thomas W. Fowler & Son, as assignees of a lease, against the defendant, who is a party to said lease, to recover possession of certain premises in this city.

The justice of the peace, after trial, gave judgment in favor of the plaintiffs for possession, and the defendant brought the case to this court by appeal.

The parties have stipulated to try the case before the court without a jury, and they have agreed on the substantial facts which govern the case.

It appears that the defendant, on August 17, 1901, made an agreement with Thomas W. Fowler, a real estate agent, to take possession of the premises and pay therefor a rental of fifteen dollars per month, payable in advance. The contract of lease was made by using a printed form, and in the blank space in the body of

which was written the following words: "It is hereby agreed that the said D. J. Tavenner shall be entitled to occupy the above-mentioned premises until such time that Mr. Hugo Worch (the present owner), or his heirs or assigns shall desire the said premises or part thereof for building purposes."

A certain other provision was also embodied in the written portion of said agreement, which was, in effect, that if legal notice was served upon the owner to connect the said premises with water and sewer connections, the tenancy should cease upon the serving of a regular thirty-day notice.

No default was made by the defendant in the payment of rent or in any other manner, and no thirty-day notice was served upon him; but the said Hugo Worch, having given notice that he desired the premises for building purposes, it is claimed by the plaintiff's counsel that the tenancy thereupon ceased, without any notice to quit, which might otherwise have been required.

The defendant, not acquiescing in the request to surrender the property on receipt of this information, the usual seven-day summons was issued on the complaint of the plaintiffs herein, who claim that they became entitled to bring such action by virtue of an assignment of the said lease to them on January 6, 1904.

It appears from the said lease and the agreement of the parties that neither Mr. Fowler, the original lessor, nor Thomas W. Fowler & Son, the assignees, claimed to own the said property; but that during all the time of the said tenancy or agreement as to the occupancy by the said defendant, the said Hugo Worch was the owner, the said lessor and his assigns assuming only to control the possession of the said property until such time as the owner should desire it for building purposes; and the lessor and the lessee both knew who the owner was, and both agreed that if he should desire the said premises for building purposes, their contract was to be at an end.

The lease can not, therefore, be said to create a tenancy at will, which would necessarily be a tenancy at the will of both parties. Neither can it create a tenancy at the will of the lessor, although the tenancy is to continue as a monthly tenancy until such time as the owner desires the same for building purposes.

If the lease had been that the defendant should occupy the premises until such time as the lessor might desire to again have possession of the property for building purposes, it would create a tenancy more nearly like a tenancy at will; and in that event it might have been necessary for the lessor to have given a thirty-day notice to terminate such a tenancy, although not strictly the tenancy referred to as a tenancy at will under our statute.

Both parties to this controversy cited the case of *Shaw v. Hoffman*, 25 Michigan, 162. There, Judge Christy, speaking for the court, held that a contract of lease for five years, but in which the lessee agreed to give up the possession at any time the lessor should conclude to build on the premises, required the usual statutory notice to quit in order to terminate the tenancy; but in that decision he used this language, which seems applicable to the

present case: "Had the condition been made to depend upon some event over which neither party could exercise any control, or over which each could exercise an equal control, it might reasonably be said that each took upon himself the risk of the happening of the event, and, therefore, no notice should be required."

It seems to me that the case thus cited is exactly the situation of the parties under the lease in this case, and, although the tenant agreed to pay rent by the month in advance, and the lessor, by taking the money in advance, would, ordinarily, have become bound to keep him in possession of the property for that month at least, still, where the tenancy was to terminate at the will of a third party, who was the owner and not a party to the contract, if that will had been made manifest to them both at any time during the month for which rent was paid in advance, the tenancy would, nevertheless, cease, and the lessor and lessee would have to adjust their accounts according to the number of days which the lessee had actually occupied the premises before the happening of the event, or otherwise, as might be proper. It is similar to a tenancy for the life of a third party; when the life ceases, that moment the tenancy terminates, and the legal right of the tenant to possession is gone.

The plaintiffs' assignor in this case only assumed to control the possession of the property until such time as the owner should require the same, and to restore the possession to him at that time. He made his contract of lease in accordance with this understanding, and if he is required to give thirty days' notice the purpose of his contract with the owner and with the lessee would be defeated.

The fact that the rent was to be paid monthly, in advance, did not fix the duration of the term. *Ela v. Bankes*, 37 Wis., 89; *Hollis v. Pool*, 3d Met., 350; *Clark v. Rhoads*, 79 Ind., 344.

The Code of this district, section 1218, provides that "when real estate is leased for a certain term no notice to quit shall be necessary, but the landlord shall be entitled to the possession, without such notice, immediately upon the expiration of the term."

Under a similar statute in Iowa, it was held, that where a tenant had contracted to occupy certain property only so long as he should continue in the employ of the landlord, his tenancy ceased the moment he ceased to be so employed, and the landlord became entitled to possession without any notice to quit. *Grosvenor v. Henry*, 27 Iowa, 272.

From all of the authorities and the arguments presented, I am constrained to hold that the tenancy of the defendant terminated the moment he was informed of the owner's desire to resume possession of his property for building purposes; and that no thirty-day notice is required of the landlord before bringing his action for possession. The fact that a thirty-day notice was required under the terms of the lease in order to terminate the tenancy in case of notice to the owner to connect the premises with water and sewer connections clearly indicates that the omission to require the same in case of the owner desiring the premises for building purposes, was intentional, and that the same was well understood by both the lessor



and lessee when the said contract of lease was entered into. The words create a limitation upon the estate of the tenant, and not a condition by which the tenancy could be terminated.

Mr. McAdam, in his work on Landlord and Tenant, published in 1900, in section 171, states the law as follows: "Where the term is limited conditionally upon the happening of some event, the term will cease at the expiration of the time, or upon the happening of the event. A lease for the life of a particular person determines, of course upon the death of the party. One for the joint lives of two or more persons will terminate on the death of either of them; and one to a partnership for so long as it shall continue, will terminate on the dissolution thereof."

In Wood's Landlord and Tenant, sections 292 and 293, substantially the same doctrine is laid down. The estate of the tenant is a contingent one, and determines immediately on the happening of the contingency.

As stated by McAdam, section 22, "When an estate is so limited by the words of its creation that it can not endure for any longer time than until the contingency happens, upon which the estate is to fail, this is denominated a limitation." In such a case the estate determines as soon as the contingency happens. The difference between a limitation and a condition is defined to be this: that in order to defeat the estate in the latter case it requires some act to be done, such as making an entry to effect it, while in the former, the happening of the event is in itself the limit beyond which the estate no longer exists, but it is determined by the operation of law, without requiring any act to be done by any one.

I find, therefore, that the plaintiffs are entitled to a judgment in this case for possession, and for \$92.50 compensation for the use and occupation of the said property from the 4th day of November, 1905, to the 9th day of May, 1906, to be rendered against the defendant and his surety on the undertaking for appeal in this case, with costs, and such judgment will be entered.

IRVING W. DAVIDSON ET AL.,

v.

P. V. MITCHEL.

APPEAL FROM JUSTICE OF THE PEACE; TRIAL OF RIGHT OF PROPERTY; APPEAL BOND.

The appeal bond required by section 85 of the Code to be given on appeal from a judgment of a justice of the peace on a trial of right of property is a different instrument from the undertaking required by section 81 to be given on an appeal from a judgment of a justice of the peace in an ordinary proceeding; and the giving merely of the undertaking provided for by section 81 is not sufficient to give this court jurisdiction to entertain an appeal from a judgment on trial of right of property.

No. 48,391. Law. Decided May, 1906.

HEARING on a motion to dismiss an appeal from a justice of the peace. Appeal dismissed.

Mr. James A. Toomey for the appellant.

Mr. Howard Boyd for the appellee.

Mr. Justice BARNARD delivered the opinion of the Court:

In the case of P. V. Mitchel v. C. B. McPherson, in Justice Strider's court, a writ of replevin

was issued, on which the marshal seized certain property, constituting the fixtures in a store located at 68 O street N. W.

On the appearance of the plaintiffs in this case, who claim the ownership of said property by virtue of a deed of trust, an issue was made before the said justice, and, after trial, judgment was rendered in favor of the plaintiffs and claimants herein for the possession of the goods claimed.

Thereupon the defendant herein gave notice of an appeal and filed the usual undertaking required by section 31 of the Code.

The papers were thereupon sent up to this court by the justice, and a motion has been made to dismiss the said appeal, on the ground that the undertaking given by the appellant is not the proper bond required by the rules regulating practice before justices of the peace, adopted by this court in general term.

The motion has been argued and submitted, and the court is called upon to decide whether or not so much of rule 24, prescribing the forms in use in suits before justices of the peace, as pertains to this case, is such a rule as the court had power to make, and such as is required under a proper construction of sections 33-34 and 35 of the Code.

Section 8 of the Code provides that this court, in general term, shall make rules regulating the practice and pleading before justices of the peace, and in relation to appeals from their judgments, not inconsistent with law.

On page 34 of the rules, as prescribed by this court in general term, will be found the form of an undertaking on appeal, which is substantially the form adopted by the appellant in this case, but on page 20 is the form which the appellee insists is the one that should have been adopted, and is the one that is required by the language of the Code, as well as by the nature of the proceeding, it being a special one, and the judgment being different from the ordinary judgment in suits before justices of the peace.

The proceeding is one to try the title to personal property taken on process issued by a justice of the peace, and which is therefore in the custody of the law at the time the proceeding is instituted. It is not for the recovery of money or damages. If so, it would have to be a different action, either for damages alone or an action of replevin, which combines the right to recover possession of property, with damages for wrongfully taking and detaining or wrongfully detaining the same.

Section 31 of the Code, and the form on page 34 of the Rule Book both require, in the ordinary case, an undertaking to satisfy and pay whatever final judgment may be recovered in this court, the appellant and his surety both agreeing that judgment may be entered against them jointly or separately.

Section 30 of the Code provides that the appeal must be prayed within six days after the entering of the judgment, and section 31 provides that the said undertaking must be given within six days, exclusive of Sundays and legal holidays, after the entry of judgment, so that the time for the appeal and the time for filing the undertaking is the same, with the exception that one excludes Sundays and legal holidays and the other is silent in that respect.

The provision for an appeal contained in section 35 of the Code is that the appeal may be taken from the judgment as in other cases, provided the same is prayed within four days after the entering of judgment, and an appeal bond is given within six days, exclusive of Sundays and legal holidays, thereafter; so that if the appeal is noted within four days, the bond required need not be given until the tenth day, exclusive of Sundays and legal holidays, after the entry of judgment.

These differences in the time of taking the appeal and entering the bond would not necessarily require any different form of undertaking or bond; but it is claimed that the words, "appeal bond," used in this section of the Code, have a well defined meaning in the law; and the same would not be equivalent to or satisfied by the undertaking described in section 31.

It seems to me that this argument is well taken. An appeal bond is defined by the law to be a voluntary obligation entered into by the appellant and his sureties as obligors, with the appellee as obligee, conditioned that the obligors shall prosecute the appeal with effect or answer to the liability created by the bond.

As defined in the case of *Ring vs. Mississippi River Bridge Company*, 57 Mo., 498, "It is an obligation conditioned for the prosecution of the appeal with effect, and if the appeal is prosecuted with effect, and the case is reversed for some error of law, then the conditions are avoided, and the liability thereon ceases."

One distinction between an undertaking on appeal and an appeal bond may be stated thus: an appeal bond is a specialty under seal; an undertaking on appeal is an unsealed promise in writing.

The purpose of an appeal bond is to protect the appellee from vexatious litigation and the expense of the appeal; and it is a purely statutory requirement. Being statutory, the security must be in accordance with the statute before the appellate court can take jurisdiction of the case on appeal.

Neither the appellate court nor the trial court can dispense with the statutory security or accept a security of different character from that named in the statute. It must therefore follow that where no bond is given as prescribed, the appeal must be dismissed for want of jurisdiction, unless the requirement is deemed to be waived by the appellee.

It is plain to be seen that the appeal bond prescribed by the rule of the court in this case is a very different obligation from the undertaking given. Whether the undertaking is stronger or more beneficial to the appellee, or one that imposes greater obligations on the appellant and his sureties, is of no consequence, if the statute, correctly construed, requires an appeal bond, such as is described in the rule.

I am of the opinion that the appeal bond is required, and should have been given, and not an undertaking; and that this court is now without jurisdiction to consider the case on appeal, and the appeal must be dismissed; and the motion to dismiss the same will therefore be granted.

When you want printing done, and done right, bring it to the Law Reporter Printing Co.

## Legal Notices.

### FIRST INSERTION.

Jesse H. Wilson and Jesse H. Wilson, Jr., Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

Estate of Hiram R. Smith, Deceased.  
No. 13,612. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Bernard T. Janney, executor thereunder, it is ordered this 15th day of May, A. D. 1906, that Ida M. Smith, Arthur C. Smith, Frederick M. Smith, Stella Smith, Helen Smith, Harry Smith, Barton Smith, and Ralph Smith, and all others concerned, to appear in said court on Tuesday, the 19th day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in *The Washington Law Reporter* and *The Washington Times* once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 20-St

J. Paul Earnest, Solicitor

In the Supreme Court of the District of Columbia.  
Champe B. Thornton et al. v. Jennie T. Powers et al.  
Equity, No. 21,956.

Upon consideration of the report of John P. Earnest, trustee, filed herein, it is, this 17th day of May, A. D. 1906, ordered that said trustee be authorized to accept the offer of Heber L. Thornton to purchase at private sale for twenty-five hundred dollars (\$2,500), lots 10, 11, and 12, in block 12, and lots 1 and 2, in block 8, of the lots decreed to be sold in the above-entitled cause, and further that said sale of said lots be ratified and confirmed, unless cause to the contrary be shown on or before the 18th day of June, A. D. 1906; provided a copy of this order be published in *The Washington Law Reporter* once a week for three successive weeks before said date. HARRY M. CLAUBAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 20-St

R. A. Curtin, Solicitor

In the Supreme Court of the District of Columbia.  
Mary Molloy et al. vs. Ellen O'Brien et al.  
No. 23,188. Equity Docket No. 58.

The object of this suit is to partition by sale the estate of William Santry, also known as William Santry, deceased, and to distribute the proceeds to heirs at law and parties entitled thereto. On motion of the complainant, it is this 17th day of May, A. D. 1906, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in *The Washington Law Reporter* once a week for three successive weeks. By the court: HARRY M. CLAUBAUGH, Chief Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 20-St

J. Dawson Williams, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of John Crane, Deceased.  
No. 13,677. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by J. Dawson Williams, it is ordered, this 18th day of May, A. D. 1906, that Michael, Daniel, Patrick and James Crane, otherwise known as Cream, the unknown heirs at law and next of kin of John Crane, deceased, and all others concerned, appear in said court on Tuesday, the 19th day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in *The Washington Law Reporter* and *The Washington Times* once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: M. J. Griffith, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 20-St

**Legal Notices.****Wm. E. Ambrose, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Rosena Auth**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of May, 1906. **ANNIE M. LAUER**, 1201 B St. N. E. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,601. Administration. [Seal.] 20-St

**McCammon & Hayden, Attorneys****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the State of Pennsylvania, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Robert Armstrong** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of May, 1906. **E. A. WEIR**, Perth, Ontario, Canada. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,603. Administration. [Seal.] 20-St

**R. Golden Donaldson, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of John M. Welby, Deceased.  
No. 13,813. Administration Docket—**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by **Adelaide G. Welby**, it is ordered this 11th day of May, A. D. 1906, that **Harry E. Welby**, Stag Hotel, Van Buren street, Chicago, Ill., and all others concerned, appear in said court on Thursday, the 31st day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day. [Seal] **WENDELL P. STAFFORD**, Justice. Attest: **Wm. C. Taylor**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 20-St

**Blair & Thom, Attorneys****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **William R. Garnett**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 14th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 14th day of May, 1906. **ELLEN G. MARSHALL**, **MARY R. GARNETT**, **NANNIE E. GARNETT**, 2009 1st. N. W. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,464. Administration. [Seal.] 20-St

**Blair and Thom, Attorneys****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Irene H. Stansbury**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of May, 1906. **WILLIAM CORCORAN HILL**, No. 1724 H street N. W. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,667. Administration. [Seal.] 20-St

**Legal Notices.****Sheehy & Sheehy, Attorneys****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Joseph P. Brass, Deceased.  
No. 13,637. Administration Docket—**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by **Thomas P. Brown**, it is ordered this 14th day of May, A. D. 1906, that **Howard Smith** and **Julia Smith Bee**, of Allegheny County, State of Pennsylvania, and the unknown heirs at law and next of kin of said deceased, if any there be, and all others concerned, appear in said court on Monday, the 25th day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] **DELL P. STAFFORD**, Justice. Attest: **Wm. C. Taylor**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 20-St

**Blair Lee, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Benjamin H. Buckingham**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of May, 1906. **MARGARET C. BUCKINGHAM**, 1625 H St. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,668. Administration. [Seal.] 20-St

**W. E. Ambrose, Solicitor****In the Supreme Court of the District of Columbia.****Charles W. H. Stock v. Frederick Stock et al.****No. 26,030. Equity Doc. No. 58.**

The object of this suit is to have partition by sale of lot numbered one hundred and seventeen (117) in **Frank J. Dieudonne** and others' subdivision of square numbered one hundred and fifty-one (151), as said subdivision is recorded in the office of the surveyor of the District of Columbia in book 17, page 131, in the city of Washington, District of Columbia, the distribution of the proceeds of sale to the parties entitled thereto and incidental relief prayed for in the bill of complaint. On motion of the complainant, by **Wm. E. Ambrose**, his solicitor, it is, this 14th day of May, A. D. 1906, ordered that the defendant, **William Stock**, alias **William Stack**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and The Washington Times once a week for three successive weeks prior to said return day. By the Court: [Seal] **HARRY M. CLABAUGH**, Chief Justice. True copy. Test: **John R. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. 20-St

**E. H. Thomas, Solicitor****In the Supreme Court of the District of Columbia.****Mattie P. Billingsley v. Chastain M. Billingsley, Wilda Wade.** No. 26,193. Equity Docket No. 58.

The object of this suit is to obtain a divorce from the bond of marriage now existing between complainant and defendant **Billingsley** because of the alleged adultery of said defendant with the co-respondent, **Wilda Wade**. On motion of the complainant, it is, this 9th day of May, A. D. 1906, ordered that the defendant **Wilda Wade** cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in the Washington Law Reporter and the Evening Star once a week for three successive weeks. By the court: **HARRY M. CLABAUGH**, Chief Justice. True copy. Test: **John R. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. 20-St

## Legal Notices.

## SECOND INSERTION.

Adam A. Weschler, Auctioneer  
(Successor to James W. Ratcliffe.)

**Executor's Sale of Valuable Unimproved Real Estate**  
on the Tunlaw Road, Arizona Avenue and Ridge Road, Between 39th and 46th Streets Northwest, Containing About 105 Acres, to be Sold in 5 Parcels.

By virtue of a decree of the Supreme Court of the District of Columbia, holding a Probate Court, in re estate of Henry Kengia, deceased, the undersigned executor will offer for sale by public auction, in front of the respective premises, on Wednesday, the twenty-third day of May, A. D. 1906, commencing at four o'clock P. M., the following described real estate, situate in the county of Washington, District of Columbia, to wit:

Parcel 1. Beginning at the northwest corner of Beatty and Hawkins' addition to Georgetown, thence north 86° 12' west 1,202 feet to the east line of Arizona avenue; thence with the east line of Arizona avenue south 8° 21' west 734.66 feet; thence north 86° 42' 30" east 1,556.33 feet to the west line of Beatty and Hawkins' addition to Georgetown; thence north 28° 56' west 610.50 feet to the place of beginning, containing 20.31 acres.

## IMMEDIATELY THEREAFTER.

Parcel 2. Beginning for the same at the intersection of the west line of Arizona avenue with the south line of Wesley Heights; thence along the west line of Arizona avenue south 8° 21' west 747.32 feet; thence south 86° 42' 30" west 297.67 feet; thence north 18° 30' west 455.32 feet; thence north 24° 51' west 411 feet to the south line of Wesley Heights; thence along the south line of Wesley Heights north 86° 18' east 724.64 feet to the place of beginning, containing 8.766 acres.

## IMMEDIATELY THEREAFTER.

Parcel 3. Beginning for the same on the east side of Arizona avenue at a point 784.66 feet southerly from its intersection with the south line of Wesley Heights; thence north 86° 42' 30" east 1,556.33 feet to the west line of Beatty & Hawkins' addition to Georgetown; thence with said west line south 23° 56' east 495 feet; thence south 79° 56' west 1,884.66 feet to the east line of Arizona avenue; thence with the east line of Arizona avenue north 8° 21' east 698.21 feet to the place of beginning, containing 22.61 acres.

## IMMEDIATELY THEREAFTER.

Parcel 4. Beginning for the same on the west line of Arizona avenue 747.32 feet southerly from its intersection with the south line of Wesley Heights; thence south 86° 42' 30" west 297.67 feet; thence south 86° 29' west 1,532.10 feet to the east side of Ridge road; thence with the east side of Ridge road south 7° 23' 40" east 395.23 feet; thence south 12° 32' east 400.98 feet; thence north 86° 25' 20" east 525.43 feet; thence south 18° 50' east 194.41 feet; thence south 61° 4' 40" east 1,001.63 feet to the west line of Arizona avenue; thence with the west line of Arizona avenue north 8° 21' east 405.32 feet; thence north 5° 45' 10" west 409.34 feet; thence north 79° 56' east 105.07 feet to the west line of Arizona avenue; thence with the said west line north 8° 21' east 710.81 feet to the place of beginning, containing 40.76 acres.

## IMMEDIATELY THEREAFTER.

Parcel 5. Beginning for the same on the east side of Arizona avenue at a point 1,972.61 feet southerly from its intersection with the south line of Wesley Heights; thence north 88° 30' east 986.24 feet; thence south 6° 12' east 801.88 feet; thence south 88° 30' west 529.95 feet; thence north 36° 12' 30" west 299.00 feet to the east line of Arizona avenue; thence with said east line north 8° 21' east 389.44 feet to the place of beginning, containing 12.88 acres.

Terms: One-third cash, the balance in one (1) and two (2) years, with interest from the day of sale at 6 per cent (5%) per annum, payable semi-annually, secured by deed of trust on the property sold, or all cash, at the option of the purchaser. A deposit of \$500.00 on each parcel required at the time of sale. If terms of sale are not complied with in 15 days from the day of sale, the executor reserves the right to resell the property at the risk and cost of the defaulting purchaser, after five (5) days' advertisement of such resale in some newspaper published in the city of Washington, District of Columbia. All conveyancing, recording, etc., at purchaser's cost.

NOTE.—Plats of the above property obtained upon application to the undersigned, or the auctioneer, No. 290 Pa. ave. N. W. EPHRAIM S. RANDALL, Executor, 7th Street Wharf Southwest. 19-2t

## Legal Notices.

Geo. C. Aukam, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Mary C. Pryor, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of April, 1906. CHAS. H. BRUCE, 1616 Corcoran st. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,627. Administration. [Seal.] 19-3t

Wolf & Rosenberg, Attorneys

Supreme Court of the District of Columbia,  
Holding a Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of George Cohen, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 7th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of May, 1906. JULIUS COHEN, 1100 7th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,640. Administration. [Seal.] 19-3t

H. G. Kimball, Solicitor

In the Supreme Court of the District of Columbia.

Sallie R. Reeves v. J. Edgar Reeves et al.

No. 23,204. Equity Docket, No. 68.

The object of this suit is to obtain an absolute divorce. On motion of the complainant, it is, this 7th day of May, A. D. 1906, ordered that the defendants, J. Edgar Reeves and Grace Dawson, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Times. By the court:

[Seal] HARRY M. CLAABAUGH, Chief Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 19-3t

Irving Williamson, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John Prioleau, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of May, 1906. LIZZIE V. PRIOLEAU, 1390 14th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,655. Administration. [Seal.] 19-3t

Perri W. Frisby, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Fannie Chapman, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 9th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of May, 1906. JOHN C. NORWOOD, 1632 Kalorama Road. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,618. Administration. [Seal.] 19-3t

**Legal Notices.**

**Carlisle & Johnson, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of James H. Forsyth, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 4th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of May, 1906. MARY ANN FORSYTH, 1802 Belmont road. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,642. Administration. [Seal.] 19-31

**Alex. H. Bell, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Patrick Crowe, Deceased.**  
**No. 13,609. Administration Docket —**

Application having been made herein for letters of administration on said estate by Dr. John W. Crowe, it is ordered this 10th day of May, A. D. 1906, that Margaret Maloney nee Crowe, Bridget Gallaher nee Crowe, and all others concerned, appear in said court on Friday, the 15th day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Times once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day. [Seal] WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 19-31

**J. J. Darlington, Attorney**  
**In the Supreme Court of the District of Columbia.**  
**Special Term for Probate Business.**  
**In the Matter of the Estate of Henry Murray, Deceased.**

**No. 13,631. Admn. Doc. —**  
 Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by B. Francis Saul and Patrick Smyth, it is ordered this 11th day of May, A. D. 1906, that Daniel Murray, and all others concerned, appear in said court on Tuesday, the 12th day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 19-31

**F. Sprigg Perry, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Henry Riggs Rathbone, Committee, Plaintiff, v. Henry Reed Rathbone, Insane, Henry Riggs Rathbone, Gerald Laurence Rathbone, Clara Pauline Randolph, Defendants. Equity, No. 28,194.**

The object of this suit is to ratify the agreement of April 1, 1904, by and between the Cosmos Club of Washington, District of Columbia, on the one part, and Henry Riggs Rathbone, both as committee of Henry Reed Rathbone, insane, and by said Henry Riggs Rathbone, Gerald Laurence Rathbone, and Clara Pauline Randolph, for the sale of lot 28 of Harvey Kennedy et al., trustees, subdivision of lots 12 and 15, and parts of lots 18 and 14 in square No. 221, in the city of Washington, District of Columbia, as per plat recorded in the office of the surveyor of the District of Columbia, in libel W. B. M., folio 59, and to authorize the sale of this lot, situate as aforesaid, upon the terms set forth in the bill of complaint. On motion of the complainant, it is, this 8th day of May, A. D. 1906, ordered that the defendant, Henry Reed Rathbone, insane, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 19-31

**Legal Notices.**

**John Riddout, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Joshua Bishop, Deceased.**  
**No. 13,620. Administration Docket —**

Application having been made herein for probate of the last will and testament and codicil of said deceased, and for letters of administration with will annexed to Mary A. Rogers on said estate, by Nannie A. McLemore, a devisee, it is ordered this 8th day of May, A. D. 1906, that Thomas J. Bishop, Presley Alexander, Lee Moore, Roy Moore, Mattie Moore, and Fannie Devin, and all others concerned, appear in said court on Friday, the 15th day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Evening Star, once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 19-31

**Geo. H. White, Attorney for Plaintiff**  
**In the Supreme Court of the District of Columbia.**  
**Ferdinand L. Bornett, Plaintiff, v. Israel Dorsey, Defendant. At Law, No. 48,442.**

The object of this suit is to recover from the defendant, Israel Dorsey, the sum of \$300.00, with interest at the rate of six per cent per annum from the 14th day of August, 1903, the said sum of money so claimed by the plaintiff being the amount paid by said Ferdinand L. Bornett for the use, benefit, and behoof of said Israel Dorsey, at his request, according to particulars of the defendant filed in this cause, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 4th day of May, 1906, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. By the [Seal] Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Alf. G. Buhrman, Asst. Clerk. 19-31

**Edward S. Bailey, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of William Walter, Deceased.**  
**No. 13,623. Administration Docket —**

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by Dora Kramer, it is ordered this 9th day of May, A. D. 1906, that the unknown heirs at law and next of kin of William Walter, deceased, and all others concerned, to appear in said court on Tuesday, the 12th day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times, once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 19-31

**James F. Bundy, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Hyson I. Bessie, Deceased.**  
**No. 13,639. Administration Docket —**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Thomas M. W. Greene and Daniel B. Webster, it is ordered, this 11th day of May, A. D. 1906, that notice be and hereby is given to James H. Bessie, and all others concerned, to appear in said court on Tuesday, the 12th day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 19-31

**Legal Notices.**

**Wilson & Barksdale, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**In re Estate of Harriet Seton Harris, Deceased.**  
 No. 18,588.

Application having been made herein for the probate of the last will and testament of Harriet Seton Harris, deceased, and for letters testamentary on said estate by Fannie C. Willis, the executrix therein named, it is ordered this 8th day of May, A. D. 1906, that George McAllister Harris, and all others concerned, appear in said court on the 11th day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided notice hereof be published in The Washington Law Reporter and Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be

[Seal] not less than thirty days before said return day. **WENDELL P. STAFFORD, Justice.** A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 19-3t

**John B. Lerner, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Sarah E. McDonough, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of May, 1906. **THE WASHINGTON LOAN AND TRUST CO.,** Andrew Parker, Treasurer. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,688. Administration. [Seal.] 19-3t

**Edward L. Gies, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William F. Partlow, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of May, 1906. **MARY ELIZABETH GAEGLER, 1523 8th st. N. W.** Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,629. Administration. [Seal.] 19-3t

**Geo. O. Gertman, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Margaret Adams, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of May, 1906. **WILLIAM FRANCIS ADAMS, 1106 N. Y. ave. N. W.** Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,578. Administration. [Seal.] 19-3t

**Brandenburg & Brandenburg, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Henry Kimmel, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of December, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of December, 1906. **ANNIE KIMMEL, 608 Louisiana ave.** Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,804. Administration. [Seal.] 19-3t

**Legal Notices.**

**Jas. F. Bundy, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Beulah Bacon, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 7th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of May, 1906. **GEORGE R. BROWN, 1639 4th st. N. W.** Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,563. Administration. [Seal.] 19-3t

**Leckie, Fulton & Cox, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Margaret McHenry, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 4th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of May, 1906. **WILLIAM A. FOY, Columbian Building.** Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,648. Administration. [Seal.] 19-3t

**Wilson and Barksdale, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Minson W. Boutwell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 4th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of May, 1906. **NANNIE B. CROSWELL, 1328 Emerson st. N. E.** Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,566. Administration. [Seal.] 19-3t

**P. R. Hilliard, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Margaret Carroll, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 4th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 4th day of May, 1906. **WILLIAM H. MCGRANN, 508 F st., N. W.; MARY ELLEN HALPIN, 1580 Third st., N. W.** Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,546. Administration. [Seal.] 19-3t

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Catharine Levi, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of May, 1906. **THE WASHINGTON LOAN & TRUST CO.,** by Andrew Parker, treasurer. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,555. Administration. [Seal.] 19-3t



**Legal Notices.**

**D. W. O'Donoghue, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**In re Estate of James Dorsey, Deceased.**  
**No. 18,149. Adm. Doc. —.**

**DECREE.**

Upon consideration of the report of Daniel W. O'Donoghue, executor, filed herein on the 8th day of May, A. D. 1906, that he has sold part of original lot 4, in square 22, in the city of Washington, in the District of Columbia, described as follows: Beginning at a point on the south line of I street distant twenty (20) feet east from the northwest corner of said lot and running thence south eighty (80) feet to the south line of said lot; thence east twenty (20) feet; thence north eighty (80) feet to the said south line of I street and thence west along said south line of I street twenty (20) feet to the place of beginning, for the sum of \$2,700.00 to Michael Dorsey, it is by the court, this 8th day of May, A. D. 1906, adjudged, ordered, and decreed that the said sale be and it is hereby ratified and confirmed, unless cause to the contrary be shown on or before the 11th day of June, 1906. Provided a copy of this decree be published in the Washington Law Reporter and in The Washington Times, once [Seal] a week for three successive weeks before said date. **WENDELL P. STAFFORD, Justice.**  
 A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 18-8t

**THIRD INSERTION.**

**Henry S. Matthews, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia and the State of Pennsylvania, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Louis Mackall, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 30th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 30th day of April, 1906. **LOUIS MACKALL, JR., 3044 O St. N. W.; EDWARD J. WELD, Meyersdale, Pa. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,625. Administration. [Seal.]** 18-3t

**E. H. Thomas, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**In re Estate of Reuben B. Detrick, Deceased.**  
**Adm. No. 12,549.**

The executor and trustee having reported that he has sold premises Nos. 408 and 410 N street northwest, being lots numbered eighty-five (85) and eighty-six (86), in Bryant's subdivision of lots in square numbered five hundred and thirteen (513), in the City of Washington, District of Columbia, to E. C. Catts Company, incorporated, for the sum of six thousand one hundred (\$6,100) dollars, net cash, it is, by the court, this 1st day of May, A. D. 1906, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 1st day of June, 1906. Provided a copy of this order be published in The Washington [Seal] Law Reporter once a week for each of three successive weeks before said last named day. **WENDELL P. STAFFORD, Justice.** A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 18-8t

**John Rldout, Attorney**  
**In the Supreme Court of the District of Columbia.**  
**The Alcott-Ross Company, a Corporation, Plaintiff, v. Williamson and Libbey Lumber Company, a Corporation, Defendant. At Law, No. 48,400.**

The object of this suit is to recover the sum of \$1,728.56 against the defendant for breach of contract, and to have judgment of condemnation of certain credits of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 25th day of April, 1906, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in [Seal] case of default. By the Court: **WRIGHT, Justice.** A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. 18-8t

**Legal Notices.**

**W. H. Sholls, Attorney**  
**In the Supreme Court of the District of Columbia.**  
**Katharina Herrmann v. The Unknown Heirs, Allenees, and Devisees of John Harrison et al. Equity No. 26,208.**

The object of this suit is to perfect the title of the complainant to that part of original lots 10 and 11, in square 877, in the city of Washington, District of Columbia, described as follows: Beginning at the southeast corner of said original lot 10 and running thence west 8 feet, thence north 98 feet 6 inches, thence east 25 feet to a public alley, thence south, on the line of said alley, 8 feet 10 inches, thence west 7 feet, thence south 18 feet to lot 9, thence west 15 feet to the intersection of the dividing line between lots 9 and 11, and thence south 66 feet 8 inches to the place of beginning. On motion of the complainant it is this 2d day of May, A. D. 1906, ordered that the defendants, the unknown heirs, devisees, and allenees of John Harrison, deceased, and the unknown heirs, allenees, and devisees of Albert B. Norton, trustee, deceased, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of forty days from the first publication of this order, good cause therefor having been shown to the satisfaction of the court; otherwise this cause will be proceeded with as in case of default; provided a copy of this order be published in the Washington Law Reporter once a week for three [Seal] successive weeks before said return day. **WENDELL P. STAFFORD, Justice.** A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 18-8t

**M. J. Keane, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Holding Equity Court.**  
**Michael McDonnell, Complainant, v. The Unknown Heirs, Allenees, and Devisees of William Wham, William Stewart, John Ridgeway, Defendants. In Equity, No. 26,721.**

The object of this suit is to declare the title to lots 13, 14, 15, 18, 19, 20, and 21 of Brawner's subdivision of original lots 17 and 18, in square 1277, as the same is known and described on the ground plan of plat of city of Washington, District of Columbia, to be good in fee simple in the complainant by adverse possession. On motion of the complainant, by Michael J. Keane, his solicitor, it is, this 10th day of November, 1905, ordered that the defendants, the unknown heirs, allenees, and devisees of William Wham, William Stewart, and John Ridgeway, and each of them, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of the period of publication hereinafter described; otherwise this cause will be proceeded with as in case of default. Good cause having been shown, it is not necessary that this order should be published for a longer period than herein required. This order shall be published in The Law Reporter and The Washington Post once a week for four successive [Seal] weeks before the first rule day occurring after the day of the first publication. **THOS. H. ANDERSON, Justice.** A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 18-4t

[Filed May 2, 1906. J. R. Young, Clerk.]  
**Arthur G. Bishop, Joseph N. Saunders, Attorneys**  
**In the Supreme Court of the District of Columbia.**  
**Terrence J. McMahon v. John Sayle.**  
**Equity 26,189. Doc. 58.**

The object of this suit is to perfect complainant's title to the west 27 feet front on F street by the full depth thereof of original lot five (5), in square one hundred and three (108), in the city of Washington, D. C. On motion of complainant, by Bishop and Saunders, his solicitors, it is, this 2d day of May, 1906, ordered that the defendant and his unknown heirs, devisees, and allenees, if he be dead, cause his or their appearance to be entered herein on or before the first rule day occurring after the expiration of forty days, exclusive of Sundays and legal holidays, from the date of the first publication of this order; otherwise this cause will be proceeded with as in case of default. This order shall be published in The Washington Law Reporter and The Washington Post once a week for four successive weeks before said return day, sufficient cause having been shown for dispensing with a longer period of publication. [Seal] By the Court: **WENDELL P. STAFFORD, Justice.** A true copy. Test: J. R. Young, Clerk, by W. E. Williams, Asst. Clerk. 18-4t

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**Legal Notices.**

**Gordon & Gordon, Attorneys**  
In the Supreme Court of the District of Columbia.  
**Edward Shoemaker v. William L. Shoemaker et al.**  
Equity, No. 24,990. Docket 55.

The object of this bill is to make sale of the tract of ground, in the District of Columbia, known as the "Quaker Burying Ground," and distribute the proceeds amongst the heirs of Jonathan Shoemaker, deceased. On motion of the complainant, it is this 2d day of May, 1908, ordered that the defendants, Julian Shoemaker, Caroline Jack, George A. Shoemaker, Adeline Shoemaker, Rachel Shoemaker, Ellen Lukens, H. Frank Davis, A. B. Davis, Charles G. Davis, John M. Davis, Samuel B. Davis, and Isaac L. Holmes, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star prior to said return day.  
[Seal] **HARRY M. CLABAUGH**, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 18-3t

**Thos. Walker, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.  
This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of George W. Morgan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of April, 1906. **MARY E. MORGAN**, 600 2d st. S. W. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,508. Administration. [Seal.] 18-3t

**Lambert & Baker, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.  
This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Bridget Gleason, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of April, 1906. **WILTON J. LAMBERT**, 410 5th st. N. W. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 9860. Administration. [Seal.] 18-3t

**John J. Brosnan, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.  
This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Ellen Crumly, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of May, 1906. **JOHN H. BRADLEY**, 443 7th st. S. W. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,619. Administration. [Seal.] 18-3t

**Alex. H. Bell, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.  
This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Katharine B. Sullivan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 30th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 30th day of April, 1906. **JOHN J. SULLIVAN**, 87 N. Y. ave.; **DANIEL F. SULLIVAN**, 1400 N. Cap. st. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,617. Administration. [Seal.] 18-3t

**Legal Notices.**

**Wilson & Barksdale and Burton Macafee, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Ann E. Coates, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 1st day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 1st day of May, 1906. **ANNIE C. GUTHRIE**, 1215 S st. N. W.; **MARY TERESA SPALDING**, 2307 O st. N. W. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,532. Administration. [Seal.] 18-3t

**SEVENTH INSERTION.**

**P. H. Marshall, Solicitor**  
In the Supreme Court of the District of Columbia.  
**Henry B. Hutchinson v. Israel Little et al.**  
Equity No. 26,056.

The object of this suit is to establish the title of complainant, Henry B. Hutchinson, in fee simple, by the adverse possession of himself and those under whom he claims, to original lot numbered twenty-six (26), in square numbered nine hundred and fifty (950). In the city of Washington, District of Columbia. On motion of the complainant, by his solicitor, P. H. Marshall, it is, by the court, this 7th day of March, A. D. 1906, ordered that the defendants, Israel Little, if he be living, and the unknown heirs, devisees, and assignees of Israel Little, if he be dead, cause their appearance to be entered herein on or before the first rule day occurring three months after the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order to be published for three months, once a week for three successive weeks for the first month, and twice a month for each of the two succeeding months in The Washington Law Reporter and The Washington Times. **HARRY M. CLABAUGH**, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. mar. 9-16-23, apr. 13-20, may 11-18

**Leon Tobriner and Byron U. Graham, Solicitors**  
In the Supreme Court of the District of Columbia.  
**Isador Neuburger, Trustee, v. Charles W. Dant et al.**  
No. 25,838. Equity.

The object of this suit is to perfect complainant's title to part of lot lettered "G" in Benjamin Pollard's subdivision of part of square numbered five hundred and seventy (570) as per plat recorded in liber N. K., folio 177, of the records of the office of the surveyor of the District of Columbia, described as follows: Beginning for the same on "D" street at the southwest corner of said lot, and running thence east on said street seventeen (17) feet six (6) inches; thence north one hundred and twenty (120) feet to a public alley fifteen (15) feet wide; thence west on said alley seventeen (17) feet six (6) inches to the northwest corner of said lot; and thence south one hundred and twenty (120) feet to the place of beginning. On motion of the complainant, by his solicitors, Leon Tobriner and Byron U. Graham, it is this seventh (7) day of March, A. D. 1906, ordered that the defendants, Annie Middleton, Edith LePreux, Fannie Mullen, George Dant, Allan Dant, Victor Dant, Frances P. Hurley, George J. Hurley, and William B. Hurley, cause their appearance to be entered herein on or before the fortieth (40th) day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs, assignees, and devisees of Richard T. Queen, cause their appearance to be entered herein on or before the first rule day occurring three months after the publication of this order; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks prior to said first return day and twice a month for three successive months prior to said latter return day (the last publication to include one of the former publications) in The Washington Law Reporter and The Washington Times. By the court: **HARRY M. CLABAUGH**, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. mar. 9-16-23-30; apr 20-27; may 18-25-1906

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## DECISIONS BY THE COURT OF APPEALS.

### Police Regulations; Barking Dogs.

In *Heylman v. District of Columbia*, the question involved was as to the validity of a police regulation governing the keeping of barking dogs that annoy persons who are ill or that disturb the comfort and quiet of a neighborhood. The regulation provides that the "certificate of a duly licensed physician shall be sufficient evidence of the guilt of the owner of the dog." The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, holds that this method of proof is unlawful, and that the regulation in question is, in consequence, void. The judgment of conviction is therefore reversed.

### Injunction; Easements; Porch Extending Over Adjoining Lot.

In *Wilson v. Riggs* the appeal was from a decree of the court below dismissing a bill filed to compel the removal of a porch covering part of complainant's lot. It appeared that the lots of both complainant and defendant had formerly been owned by one Barr, who had erected the house on defendant's lot with the porch complained of, and thereafter had sold the lot to defendant, "with its improvements, ways, easements, rights, privileges, and appurtenances." Subsequently he conveyed the other lot to complainant. The Court of Appeals, in an opinion by Mr. Justice McComas, affirms the decree dismissing the bill.

### Trusts—Payment to Father of Minor Beneficiaries Held Valid.

The Supreme Court of the United States has reversed the decree of the Court of Appeals of this District in the case of *Darlington et al., executors, v. Turner*, reported in 33 Wash. Law Rep., 114. The suit was in equity to recover a trust fund. It appeared that one Turner, by his will, which was never admitted to probate, gave his entire estate to four nephews and nieces, all of them minors, residing in Louisiana, and appointed one Tracy, who had previously acted as his agent in making investments for him, to distribute the proceeds equally between them. Tracy turned over certain notes and money, which he claimed were all that were in his hands, to the father of said minors, who receipted for them as "natural tutor and agent for my minor children." It was claimed by complainants that this transfer to the father was in violation of the trust, and it was sought to charge the estate of Tracy in the hands of his executors with liability for the full amount, with interest. It was also claimed that he had not turned over to the father of complainants all the money and notes in his hands, but had fraudulently appropriated about \$6,000 to his own use. The decree below was in favor of complainants, and, after deducting certain credits allowed, amounted to approximately \$50,000. The Supreme Court, in an opinion by Mr. Justice White, reverses this decree, holding that under the law of Louisiana, which was the domicile of the minors, the father represented them as administrator, with full power under that law to receipt for and administer the property for their account, and that the transfer to him by Tracy of the property in the latter's hands was valid and binding; and also holding that there was no misappropriation by Tracy of any of the property. It is held, however, that the estate of Tracy is liable for the sum of \$1,890, with interest, that being represented by an interest in certain real estate which had not been turned over to the father of said minors by reason of the fact that a sale of such real estate had not then been made. The costs are decreed against complainants and directed to be paid out of the sum awarded them.

### Injunction; Alleys; Private Ways.

In *Watson v. Carver* the appeal was from a decree dismissing a bill filed to compel the removal of a shed from an alleged public alley in this city. It appeared that the alley never was a public alley; that before any one acquired rights in, to, or over it, as a private alley, it was closed; and that defendant acquired his title long before complainant acquired his, both deriving title from a common source. The Court of Appeals, in an opinion by Mr. Justice Duell, affirms the decree dismissing the bill.

## Court of Appeals of the District of Columbia.

CHARLES F. JOHNSON, APPELLANT,

v.

CHARLES E. TRIBBY.

STATUTE OF FRAUDS; CONTRACT FOR SALE OF LANDS;  
MEMORANDUM OF; SPECIFIC PERFORMANCE; NOTICE;  
INNOCENT PURCHASER.

1. A and B, owners of a lot in this city, agreed to sell the same to T, who paid them \$50 on account, taking a receipt which read: "Washington, D. C., October 6, 1904. Received of T fifty dollars in part payment for lot No. 115, sq. 1242, to be conveyed to him by us in fee [\$5300] simple on October 8, '04." This was signed by the vendees. The figures [\$5300] were inserted either just before or after the paper was signed, with the knowledge of the parties executing it. *Held*, that the paper was a sufficient memorandum of the contract to comply with section 1117, Code, D. C.
2. Where there is a dispute between vendor and vendee as to the amount to be paid, the party claiming to be entitled to the specific performance of the contract may file a bill therefor and submit the question of the amount to be paid to the judgment of the court.
3. After thus agreeing to sell the property to T, A and B applied to a real estate corporation to find a purchaser for the property at an advanced price, and D, an officer of the corporation, with knowledge of the agreement with T, sold the property to J, who was also an officer of the corporation and trustee of a fund in its hands for investment, and for whom D also acted in the matter of the purchase. *Held*, that the knowledge of D, under the circumstances, was the knowledge of J; that J was not an innocent purchaser, and the deed to him, being in fraud of the legal rights of T, was properly decreed to be null and void.

No. 1680. Decided April 3, 1906.

APPEAL by one of several defendants from a decree of the Supreme Court of District of Columbia, in Equity, No. 24,997, in suit to annul a conveyance on the ground of fraud. Affirmed.

Mr. Wharton E. Lester and Mr. W. C. Balderston for the appellant.

Mr. Howard Boyd for the appellee.

Mr. Justice DUELL delivered the opinion of the Court:

This is an appeal by Charles F. Johnson, one of the defendants below, from a decree of the Supreme Court of the District of Columbia, adjudging that a certain deed in fee simple executed and delivered to him by two of his codefendants, Beverley and Talty, is fraudulent, null and void, and vacating and canceling it. The decree further provides that Beverley and Talty are to execute and deliver to the appellee, upon his making a certain payment, a deed conveying the same premises as formerly conveyed to the appellant, subject to two certain deeds of trust on the said premises. Only the defendant, Johnson, perfected his appeal.

The record discloses that on October 5, 1904, Annie L. Beverley and Elizabeth L. Talty were the owners of lot 115, square 1242, in the city of Washington, upon which there were two deeds of trust, one to secure the payment of \$4,750, the other to secure a smaller sum. On the same day they gave Tribby, the appellee, a second deed of trust to secure the payment of eight notes for \$45.00 each, with interest.

Negotiations were entered into between Beverley and Talty and Tribby for the purchase of the lot in question, which resulted in an agreement on the following day for its purchase by Tribby, who made them a payment of

\$50 on account. The only writing that passed between the parties at that time was the following:

"WASHINGTON, D. C., October 6, 1904.

"Received of Charles E. Tribby fifty dollars in part payment for lot No. 115, sq. 1242, to be conveyed to him by us in fee [\$5,300] simple on October 8, '04.

\$50.

"ANNIE LEE BEVERLEY.

"ELIZABETH L. TALTY."

The figures in brackets were inserted by Tribby, whether before or after the paper was signed or whether inserted with the knowledge or consent of Beverley and Talty, is the subject of conflicting testimony. Upon the written orders of Mrs. Beverley two further sums of \$50 and \$20, respectively, were given by Tribby to Mrs. Talty, the former sum on October 10, 1904, two days after the day when the deed was to have been given. This shows that the owners of the property waived the condition as to time of closing the bargain, although the testimony shows that Tribby was prepared to close on the day named in the paper. On the 13th of the same month Mrs. Beverley and Mrs. Talty came to Tribby's office, but refused to execute the deed, although the sum of \$110.19, representing the balance due them, was tendered by Tribby.

They claimed that a larger sum was due them, and that they had been advised by an attorney that if they had not executed the deed it was not considered a sale. It further appears that after the agreement with Tribby Mrs. Beverley and Mrs. Talty went to Willigs, Gibbs & Daniel and entered into negotiations with Mr. Daniel to sell the property in question; that he learned from them of their negotiations with Tribby and advised them to consult a lawyer, and that if they were advised that they could legally withdraw from their negotiations with Tribby, he would take up the matter with them; that the attorney he advised them to consult was the attorney of his corporation; that on October 21st that attorney called on Tribby and tendered to his representative the sums paid by Tribby on account of the purchase, and also served written notice that all negotiations were ended because of Tribby's alleged failure to carry out the agreement; that thereupon they sold the property to the appellant Johnson, the deed being executed October 26, 1904. It further appears that appellant was the treasurer of Willigs, Gibbs, & Daniel at the time when the sale was made, and that corporation, by Daniel, its secretary, acknowledged the receipt from Johnson of \$100 to be applied as part payment on the purchase of the property. It appears that Johnson knew nothing of the purchase of the property until the deed was recorded, and that Daniel claimed to act for him as well as for the sellers. Such other alleged facts as may need to be considered will be referred to in dealing with the assigned errors.

1. It is urged on behalf of appellant that the court erred in holding that there was any valid, enforceable contract between Tribby and Beverley and Talty, or that the evidence establishes it. This is the substance of the first and fourth errors assigned. If the paper executed by Beverley and Talty is sufficient to satisfy

the Statute of Frauds as embodied in section 1117 of the District Code, then it follows that there was between the parties a valid and enforceable contract. The provision of the section applicable to the transaction under review recites that "No action shall be brought . . . upon any contract or sale of lands . . . unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, which need not state the consideration, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized."

The instrument relied on is an acknowledgment of the receipt by Beverley and Talty from the appellee of the sum of \$50 in part payment for lot No. 115, square 1242, which was to be conveyed to him by them in fee simple on October 8, 1904. It is dated Washington, D. C., October 6, 1904, and signed by the sellers and contains the figures "\$5,300," the latter having been inserted either just before or after the paper was signed, but with the knowledge of the parties executing the paper. We consider the instrument sufficient to show the promise, the location of the property, the parties, the amount to be paid, and the time when the sale was to be consummated. The caption of the receipt sufficiently locates the lot as being within the city of Washington. The instrument should be taken as an entirety.

Beverley and Talty agreed to sell to Tribby a certain lot, in a certain city, for an agreed sum, and they agreed to convey it upon a day certain, by a deed in fee simple, and at the time of executing such agreement the latter paid a certain sum as part payment for the lot. We think this satisfies the requirements of section 1117 of the District Code.

In *Ryan v. United States*, 136 U. S., 68, it was held that it was not essential, in order to satisfy the Michigan Statute of Frauds, that the memorandum for the sale of real estate should be so specific as to render a resort to extrinsic evidence needless, when the writing comes to be applied to the subject-matter.

There a complete contract was gathered from letters, telegrams, and other writings passing between the parties. The statute was, so far as it relates to the sale of lands, in substance, the same as our statute. Here there is no need of extrinsic evidence, or, if any, only as to the method of payment—whether by the assumption of trusts or by cash. If the trusts referred to in the record were not to be assumed by Tribby, then, before paying over the consideration, he was entitled to have the trusts satisfied by the vendors. We think there was an enforceable contract for the purchase and sale of the lot entered into between Tribby and Beverley and Talty. The essential terms thereof can be ascertained from the writing itself.

"Any note or memorandum in writing which furnishes evidence of a complete and practicable agreement is sufficient under the statute, and parol evidence is admissible to explain latent ambiguities, and to apply the instrument to the subject-matter." *Williams v. Morris*, 95 U. S., 444, 456. In *Waters v. Ritchie*, 3 App. D. C., 379; 22 Wash. Law Rep., 361, this court held that if the caption of the contract was imported into the contract the location of the lots

would be in Washington, while the bill of complaint described the property as in Georgetown. We do not consider that case in point, and, further, it appears that a rehearing was granted in the case.

2. Our holding that the writing is a sufficient compliance with section 1117 of the Code, renders it unnecessary for us to decide whether the defendants below waived their right to the benefit of the statute of frauds by failing to plead it. This brings us to the third error assigned, which is that Tribby's tender was insufficient to sustain a bill for specific performance. It is urged by appellant that the deed did not provide for the assumption of either of the trusts. It appears that the deed tendered recited the \$4,750 trust, and that by the terms of the deed the conveyance was to be made subject to it.

Conceding that the deed should have been drawn providing for the assumption of both the trusts by the appellee, it does not appear that the vendors indicated any such defect or omission in the deed, or expressed any dissatisfaction with its provisions. Their refusal to execute it was based upon the ground that they wanted more money, that more money was due them than was tendered. In other words, there was a dispute between the parties as to the balance to be paid. Where there is such uncertainty one claiming to be entitled to the specific performance of a contract may file a bill for a performance and submit the amount to be paid by him to the judgment of the court. *Willard v. Tayloe*, 8 Wall., 557; *Chesterman v. Mann*, 9 Hare, 212.

Were this a case simply between the parties to the contract there would be no question but that, in view of the circumstances of the case, and in the light of all the evidence, the discretion of the court would be properly exercised in decreeing specific performance. The only conclusion deducible from the record is that Beverley and Talty, finding that they could get, as it appeared to them, a little better price for the lot from another party, were anxious to escape from their legal obligations, but in the absence of proof of any undue advantage having been taken of them, we do not think that they ought to be permitted to do so.

3. This brings us to the remaining question in the case, which is as to Johnson's position in the matter: whether he is in any better position than his grantors. We think not. Admitting that Johnson was one of the trustees of a fund in the hands of Willige, Gibbs & Daniel (a corporation) for investment, and that they were authorized to enter into contracts for the investment of that fund without his knowledge and without consulting him, it must be borne in mind that he had no personal knowledge of the contract entered into in his name; that he was an officer of that corporation, and that Daniel, another officer of the corporation, acted as agent for him and for Beverley and Talty. Daniel had knowledge of the relations between Tribby and Beverley and Talty, and his knowledge, under the circumstances, was the knowledge of Johnson, who is in no better position than Daniel was to plead innocence or good faith. Daniel could not have been an innocent purchaser, and his principal, Johnson, is there-

fore not such a purchaser. The deed given Johnson was in fraud of Tribby's legal rights, and all the facts being known to Daniel, and through him to Johnson, the court below was right in holding the deed to him to be null and void.

A specific performance of the Tribby contract was rightfully directed by the trial court. Before that could be decreed it was necessary to vacate and cancel the deed to Johnson, and for the reasons stated, it was proper to annul it and hold it for naught.

Perceiving no substantial error in the record, the decree of the court below must be affirmed, with costs.

Affirmed.

LOUISA A. CROSBY, APPELLANT,

v.

JOHN RIDOUT ET AL.

EQUITY JURISDICTION; SUIT TO ESTABLISH LIEN AGAINST REAL ESTATE OF BANKRUPT; TITLE OF TRUSTEE; PRIORITIES; SEC. 499, CODE, D. C., CONSTRUED.

1. There is nothing in the Bankruptcy Act of 1898, or the amendments thereto, which interferes with the jurisdiction of the Supreme Court of this District, sitting as an equity court, to entertain a suit for the establishment of an equitable lien against the real estate of a bankrupt; and in the event of a decree by the equity court in favor of complainant it will be the duty of the bankruptcy court to give due effect to such decree.
2. Under the Bankruptcy Act of 1898, a trustee in bankruptcy takes the title to property of the bankrupt, subject to all equities, liens, or incumbrances, whether created by operation of law or by the bankrupt, which existed against the property in the hands of the bankrupt.
3. A judgment, being but a general lien, is subordinated to the superior equities of a prior specific lien; and if property becharged in equity before the entry of the judgment, the judgment will not affect such charge.
4. The term "creditors," as used in section 499, Code, D. C., prescribing the time when deeds shall take effect, means those creditors who, in the interval of time between the delivery of a deed and its delivery to the recorder of deeds for record, have fastened upon the property for the payment of their debts, and not general creditors.

No. 1646. Decided May 1, 1906.

APPEAL by complainant from a decree of the Supreme Court of the District of Columbia, in Equity, No. 25,416, dismissing a bill to establish an equitable lien in respect of certain real estate. Reversed.

*Mr. Charles W. Clagett* for the appellant.

*Mr. Mason N. Richardson, Mr. W. E. Ambrose,* and *Mr. C. H. Merillat* for the appellees.

Mr. Justice McCOMAS delivered the opinion of the Court:

The appellant, Louisa A. Crosby, by her amended bill in equity, filed January 16, 1906 (the original bill having been filed May 12, 1905), alleges that she employed John Ridout, attorney at law, to invest \$1,500 for her. On January 12, 1899, Mr. Ridout informed the appellant that he had loaned her money to Abbot E. Jones, and that it was secured by a deed of trust from Jones and wife on part of lot 12 in square 724 in this District. She also received Jones' note for \$1,500, dated January 10, 1899; the note recited that it was secured by a deed of trust on the real estate mentioned from

Jones and wife to John Ridout and Irving Williamson, trustees. The deed of trust was recorded January 11, 1899. The certificate of title from Mr. Ridout stated that the title to said real estate was good in Abbot E. Jones, subject only to complainant's deed of trust just mentioned. Interest was regularly paid to January 10, 1905.

On January 10, 1899, and until January 24, 1905, when the appellee, Merillat, was appointed trustee in bankruptcy for Mr. Ridout, the record title to said real estate was in Ridout, and since Mr. Merillat became trustee in bankruptcy, he has collected the rents from such real estate.

Upon information recently acquired by the appellant, her bill alleges that Jones never had any beneficial interest in said real estate, although he held the legal title thereto, and Jones and wife executed said deed of trust to secure the appellant as an accommodation to Mr. Ridout, who retained the money and paid the interest regularly. The real estate described in the deed of trust was the same heretofore described as owned by Mr. Ridout on January 10, 1899.

The appellant alleges that Mr. Ridout and his wife "conveyed by good and sufficient deed to Jones prior to the said deed of trust the real estate" before described; that through oversight such deed was not recorded, and upon inquiry Mr. Ridout informed appellant that it was left in his possession for record, but has been lost, or was destroyed by fire which occurred in the office building where Mr. Ridout's law offices were located, that fire having destroyed many valuable papers in his possession. These facts, says appellant, create a lien upon said real estate in her favor which a court of equity will render certain.

The bill proceeds to allege that the recording of the deed of trust from Jones and wife to Ridout and Williamson, trustees, was constructive notice of appellant's interest in such real estate, at least of a lien superior to the lien of subsequent judgment creditors, and to all claim, right, title, and interest of general creditors of Ridout and of his trustees in bankruptcy.

On March 16, 1905, Williamson and Ridout, trustees, John Ridout in his own right, Frances E., his wife, Jones and wife, and Louisa A. Crosby, the appellant, united in a deed conveying said real estate to C. W. Clagett and P. M. Brown, trustees, for the purpose of perfecting the title to said real estate, Brown and Clagett becoming substituted trustees, said real estate being conveyed to them upon the uses and trusts set forth in the aforementioned deed of trust from Jones and wife to the appellant, who joined in this deed, consenting to the substitution of trustees; such conveyance vested in the new trustees the inchoate dower right of Mrs. Ridout in said real estate.

Appellant then alleges that there was a deed of trust on said real estate to secure a debt of \$20,000, and that said debt has been paid, the trustees therein being made parties and called upon to discover whether or not such loan has been paid. The bill recites the recovery on October 15, 1904, by the Citizens' National Bank of a judgment against Ridout for \$2,501.87, and on November 11, 1904, a judgment by the same

plaintiff against said Ridout for \$2,712.74, these with interest, and both recovered in the Supreme Court of this District, and that such judgments by the adjudication of the bankruptcy of Mr. Ridout are void.

It is alleged that writs of fieri facias were issued and levied on certain real estate, but not on the real estate in the bill described, and the bill avers that the appellant is entitled to have a marshaling of assets. The prayer for relief relied on is that for a decree, establishing the title to the real estate described in the bill in Abbot E. Jones prior to the date of the deed of trust of Jones and wife to Ridout and Williamson, trustees, and establishing an equitable lien upon said real estate in favor of appellant superior to the rights of general and judgment creditors of said Ridout, and also for general relief.

To this bill, Charles H. Merillat, trustee, demurred, and after hearing, the court below sustained such demurrer and dismissed the bill, and the complainant appealed to this court.

The only question before us is whether appellant's bill states a case which entitles her to a decree ascertaining and establishing such equitable lien, or whether the adjudication of bankruptcy against Mr. Ridout excluded the court below from taking jurisdiction to decide the question raised by the bill. The learned court below dismissed the bill because, upon the case therein presented, the bankruptcy act (chapter 541, July 1, 1898) excluded the jurisdiction of the court below sitting in equity.

In the first place, we assume that the appellant's bill sufficiently avers that Mr. Ridout, with or without his wife, executed and acknowledged a deed in proper form to Jones, and that such acknowledgment was duly certified, and that Mr. Ridout delivered such deed to Jones, for, of course, it could not be a deed until there was a delivery. We think the allegation respecting the deed should be taken to import so much, and that thereafter such deed was given to Mr. Ridout to be recorded, and was lost or destroyed by fire. If Mr. Ridout conveyed the lot described to Jones, and thereafter Jones and wife executed this deed of trust, years before Mr. Ridout's bankruptcy, of course the appellant's lien would have been valid inter partes, and would have taken effect from the date of its delivery, except as to some creditors and subsequent purchasers, without notice.

The case made by the appellant's bill called upon the court to ascertain whether title to said land had passed from Ridout to Jones, and, if so, thereupon to decree that the appellant had an equitable lien upon such lot to secure her loan. So far as now appears, there were neither bona fide purchasers nor mortgagees subsequently. Two judgments were obtained, and both were void, by reason of the adjudication of bankruptcy within four months thereafter, as the bill alleges.

We find nothing in the bankruptcy act or its amendments to interfere with the ordinary jurisdiction of the court below, as a court of equity, to decree an equitable lien in favor of the appellant, if, as by the bill appears, she be entitled thereto. In *Bardes v. Hawarden Bank*, 178 U. S., 524, the court was called on to decide whether, under the bankruptcy act, a district court of

the United States, in which proceedings in bankruptcy had been commenced and are pending, has jurisdiction to entertain a suit by a trustee in bankruptcy against a person holding and claiming as his own property alleged to have been conveyed to him by the bank in fraud of creditors. In determining this question the court carefully construed section 2 and section 23 of the Bankruptcy Act, upon which the determination of this question depends. Section 2 makes the District Court of the United States, and the Supreme Court of this District, courts of bankruptcy, and invests them with numerous powers mentioned. Section 23 is as follows:

"Sec. 23. Jurisdiction of United States and State courts. a. The United States Circuit Court shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings in bankruptcy, between trustees as such and adverse claimants, concerning the property acquired or claimed by the trustees, in the same manner and to the same extent only as though bankruptcy proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants.

"b. Suits by the trustee shall only be brought or prosecuted in the courts where the bankrupt, whose estate is being administered by such trustee, might have brought or prosecuted them if proceedings in bankruptcy had not been instituted, unless by consent of the proposed defendant.

"c. The United States Circuit Courts shall have concurrent jurisdiction with the courts of bankruptcy, within their respective territorial limits, of the offences enumerated in this act." 30 Stat., 552.

Later Mr. Justice Gray says: "The jurisdiction of the courts of the United States over all matters and proceedings in bankruptcy, as distinguished from independent suits at law or in equity, was of course exclusive. But it was well settled that the jurisdiction of such suits, conferred by the second section of the act of 1867 upon the Circuit and District Courts of the United States for the benefit of an assignee in bankruptcy, was concurrent with that of the State courts. In *Eyster v. Gaff*, just cited, this court, speaking by Mr. Justice Miller, said: 'The opinion seems to have been quite prevalent in many quarters at one time, that, the moment a man is declared bankrupt, the District Court, which has so adjudged, draws to itself by that act not only all control of the bankrupt's property and credits, but that no one can litigate with the assignee contested rights in any other court, except in so far as the Circuit Courts have concurrent jurisdiction, and that other courts can proceed no further in suits of which they had at that time full cognizance; and it was a prevalent practice to bring any person, who contested with the assignee any matter growing out of disputed rights of property or of contracts, into the bankruptcy court by the service of a rule to show cause, and to dispose of their rights in a summary way. This court has steadily set its face against this view. The debtor of a bankrupt, or the man who contests the right to real or personal property with him, loses none of those rights

by the bankruptcy of his adversary. *The same courts remain open to him in such contests, and the statute has not divested those courts of jurisdiction in such actions.* If it has for certain classes of actions conferred a jurisdiction for the benefit of the assignee in the Circuit and District Courts of the United States, it is concurrent with and does not divest that of the State courts."

"Under the act of 1867, then, the distinction between proceedings in bankruptcy, properly so called, and independent suits, at law or in equity, between the assignee in bankruptcy and an adverse claimant, was distinctly recognized and emphatically declared. Jurisdiction of such suits was conferred upon the District Courts and Circuit Courts of the United States by the express provision to that effect in section 2 of that act, and was not derived from the other provisions of sections 1 and 2, conferring jurisdiction of proceedings in bankruptcy. And the jurisdiction of suits between assignees and adverse claimants, so conferred on the Circuit and District Courts of the United States, did not divest or impair the jurisdiction of the State courts over like cases."

Mr. Justice Gray further analyzes section 2 of the present Bankruptcy Act, and says it includes among the powers specifically conferred upon the courts of bankruptcy those to "(7) cause the estates of bankrupts to be collected, reduced to money and distributed, and determine controversies in relation thereto, except as herein otherwise provided."

Respecting section 2, Mr. Justice Gray concludes: "The section nowhere mentions civil actions at law, or plenary suits in equity. And no intention to vest the courts of bankruptcy with jurisdiction to entertain such actions and suits can reasonably be inferred from the grant of the incidental powers, in clause 6, to bring in and substitute additional parties 'in proceedings in bankruptcy,' and, in clause 15, to make orders, issue process and enter judgments 'necessary for the enforcement of the provisions of this act.'"

"The chief reliance of appellant is upon clause 7. But this clause, in so far as it speaks of the collection, conversion into money and distribution of the bankrupt's estate, is no broader than the corresponding provisions of section 1 of the act of 1867; and in that respect, as well as in respect to the further provision authorizing the court of bankruptcy to 'determine controversies in relation thereto,' it is controlled and limited by the concluding words of the clause, 'except as herein otherwise provided.'"

"These words 'herein otherwise provided' evidently refer to section 23 of the act, the general scope and object of which, as indicated by its title, are to define the 'jurisdiction of United States and State courts' in the premises. The first and second clauses are the only ones relating to civil actions and suits at law or in equity."

"The first clause provides that 'the United States Circuit Courts shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings in bankruptcy' (thus clearly recognizing the essential difference between proceedings in bankruptcy, on the one hand, and suits at law or in equity, on the other), 'between trustees as such and ad-

verse claimants, concerning the property acquired or claimed by the trustees,' restricting that jurisdiction, however, by the further words, 'in the same manner and to the same extent only as though bankruptcy proceedings had not been instituted and such controversies had been between the bankrupt and such adverse claimants.' This clause, while relating to the Circuit Courts only, and not to the District Courts of the United States, indicates the intention of Congress that the ascertainment, as between the trustee in bankruptcy and a stranger to the bankruptcy proceedings, of the question whether certain property claimed by the trustee does or does not form part of the estate to be administered in bankruptcy, shall not be brought within the jurisdiction of the national courts solely because the rights of the bankrupt and of his creditors have been transferred to the trustee in bankruptcy."

"But the second clause applies both to the District Courts and to the Circuit Courts of the United States, as well as to the State courts. This appears not only by the clear words of the title of the section, but also by the use, in this clause, of the general words, 'the courts,' as contrasted with the specific words, 'the United States Circuit Courts,' in the first and in the third clauses."

"The second clause positively directs that 'suits by the trustees shall only be brought or prosecuted in the courts where the bankrupt, whose estate is being administered by such trustee, might have brought or prosecuted them if proceedings in bankruptcy had not been instituted, unless by consent of the proposed defendant.'"

"Had there been no bankruptcy proceedings, the bankrupt might have brought suit in any State court of competent jurisdiction; or, if there was a sufficient jurisdictional amount, and the requisite diversity of citizenship existed, or the case arose under the Constitution, laws, or treaties of the United States, he could have brought suit in the Circuit Court of the United States. Act of August 13, 1888, c. 866; 25 Stat., 434. He could not have sued in a District Court of the United States, because such a court has no jurisdiction of suits at law or in equity between private parties, except where, by special provision of an act of Congress, a District Court has the powers of a Circuit Court, or is given jurisdiction of a particular class of civil suits."

"It was argued for the appellant that the clause can not apply to a case like the present one, because the bankrupt could not have brought a suit to set aside a conveyance made by himself in fraud of his creditors. But the clause concerns the jurisdiction only, and not the merits, of a case; the forum in which a case may be tried, and not the way in which it must be decided; the right to decide the case, and not the principles which must govern the decision. The bankrupt himself could have brought a suit to recover property, which he claimed as his own, against one asserting an adverse title in it; and the incapacity of the bankrupt to set aside his own fraudulent conveyance is a matter affecting the merits of such an action, and not the jurisdiction of the court to entertain and determine it."

"The Bankrupt Acts of 1867 and 1841, as has



been seen, each contained a provision conferring in the clearest terms on the Circuit and District Courts of the United States concurrent jurisdiction of suits at law or in equity between the assignee in bankruptcy and an adverse claimant of property of the bankrupt. We find it impossible to infer that when Congress, in framing the act of 1898, entirely omitted any similar provision, and substituted the restricted provisions of section 23, it intended that either of those courts should retain the jurisdiction which it had under the obsolete provision of the earlier acts.

"On the contrary, Congress, by the second clause of section 23 of the present Bankrupt Act, appears to this court to have clearly manifested its intention that controversies, not strictly or properly part of the proceedings in bankruptcy, but independent suits brought by the trustee in bankruptcy to assert a title to money or property as assets of the bankrupt against strangers to those proceedings, should not come within the jurisdiction of the District Courts of the United States, 'unless by consent of the proposed defendant,' of which there is no pretence in this case.

"One object in inserting this clause in the act may well have been to leave such controversies to be tried and determined, for the most part, in the local courts of the State, to the greater economy and convenience of litigants and witnesses. See *Shoshone Mining Company v. Rutter*, 177 U. S., 505, 511, 513." *Bardes v. Hawarden Bank*, supra, 535, 536, 537, 538.

We have fully quoted from this important case because, in our opinion, it determines we must decide here the question in exactly the opposite way from the determination of the same question by the learned court below.

In *Mitchell v. McClure*, 178 U. S., 539, the United States District Court as a court in bankruptcy held that it had no jurisdiction to entertain an action of replevin by the trustee in bankruptcy to recover goods from defendants, to whom it was alleged the bankrupt had conveyed them within four months before the bankruptcy proceedings in his case, and the Supreme Court affirmed this ruling; while in *White v. Schloerb*, 178 U. S., 542, 546, where a sheriff had executed a writ of replevin upon goods which had passed into the possession of a referee in bankruptcy, the Supreme Court affirmed the direction of the District Court that such goods be delivered to the trustee in bankruptcy, to keep them apart from other property to abide the further order of the court. Mr. Justice Gray said: "The question certified concerns not the trial of the title to these goods, but only the judicial custody and lawful possession of them." And again, with great caution, the court added: "Not going beyond what the decision of the case before us requires, we are of opinion that the judge of the court of bankruptcy was authorized to compel persons, who had forcibly and unlawfully seized and taken out of the judicial custody of that court property which had lawfully come into its possession as part of the bankrupt's property, to restore that property to its custody; and therefore our answer to the first question must be: 'The District Court, sitting in bankruptcy, had jurisdiction by summary

proceedings to compel the return of the property seized.'" *White v. Schloerb*, supra, 547, 548.

At the same time, in *Hicks v. Knost*, 178 U. S., 541, where the question was, has a District Court of the United States jurisdiction to entertain a bill in equity filed by a trustee in bankruptcy appointed by it, against a fraudulent grantee or transferee of the bankrupt resident in his district, to recover property belonging to the estate of the bankrupt and by him fraudulently conveyed to the defendant? Mr. Justice Gray answered: "For the reasons stated in *Bardes v. Hawarden Bank*, just decided, the answer to this question must be that the District Court has such jurisdiction by the consent of the proposed defendant, but not otherwise." *Hicks v. Knost*, supra, 542.

We conclude that the learned court below erred in deciding that the Supreme Court of the District of Columbia, holding an equity court, ought not to entertain jurisdiction in a suit for the establishment of an equitable lien against real estate of a bankrupt. Of course, it remains to be decided whether the appellant can maintain the case made by her bill. If she should succeed, we do not doubt the District Court in bankruptcy would give proper weight to such decree of the court of equity. Judge Thompson, in *Hicks v. Knost*, 94 Fed. Rep., 826, gives a good reason for our conclusion: "It seems to me that it was the intention of Congress to permit such controversies, when they could not be settled by compromise or arbitration, to be litigated in the courts which, under the general law, would have jurisdiction of them, just as assignees under State insolvency laws, bring suits in courts of general jurisdiction to collect assets, which are afterwards distributed by the courts of insolvency. The bankrupt court controls the trustee, supervises the administration of his trust, settles his accounts, and orders the distribution of the moneys in his hands, but is not required to assume the burden of the litigations necessary for the collection of assets, nor are adverse claimants of property acquired or claimed by trustees to be put to unnecessary inconvenience and expense in litigating their rights." Accordingly, Judge Thompson overruled the motion for an injunction and dismissed the bill upon the ground that the District Court was without jurisdiction to entertain a suit in equity by the trustee in bankruptcy to compel an accounting by a creditor for money paid in fraud of other creditors. On appeal, this ruling was sustained. See *Hicks v. Knost*, 178 U. S., 541. See, also, *Metcalf v. Barber*, 187 U. S., 165; *In re Spitzer* 12 Am. Bank. Rep., 346. The Supreme Court of New Hampshire thus expresses it: "The jurisdiction conferred on the Federal courts in actions of this character between trustees in bankruptcy and strangers to the bankruptcy proceedings is not exclusive, but, on the contrary, it is well settled that in all questions of title to property derived through such proceedings the State courts have concurrent jurisdiction." *Truda v. Osgood*, 71 N. H., 185.

Nor do we consider that, under our recording statutes, the trustee in bankruptcy takes the bankrupt's property as an innocent purchaser. We agree with the court in *Chattanooga*

**National Bank v. Rome Iron Co.**, 102 Fed. Rep., 761, where the court, after comparing provisions of the Bankruptcy Act of 1867 with relevant provisions of the Bankruptcy Act of 1898, concludes: "I am unable to see how any distinction can be drawn, favorable to the contention of counsel for the trustee, between the two acts. The purpose of both acts, although different language is used, seems to be to vest in the trustee the title to the entire estate of the bankrupt; and no distinction can be perceived which justifies the inference that under the last act the trustee takes the property of the bankrupt as an innocent purchaser, without notice, and that in the former he did not." And in *In re New York Economical Printing Co.*, 110 Fed. Rep., 518, the Circuit Court of Appeals decided: "The bankrupt act does not vest the trustee with any better right or title to the bankrupt's property than belongs to the bankrupt or to his creditors at the time when the trustee's title accrues. The present act, like all preceding bankrupt acts, contemplates that a lien good at that time, as against the debtor and as against all of his creditors, shall remain undisturbed."

The assignee under the last bankruptcy act, and the trustee under the present bankruptcy law, takes only such title as the bankrupt had subject to all equities, and, therefore, what the Supreme Court says in *Stewart v. Platt*, 101 U. S., 731, 739, applies to the appellee, Merillat, trustee: "He takes the property in the same 'plight and condition' that the bankrupt held it. *Winsor v. McLellan*, 2 Story, 492." "The assignee can assert, in behalf of the general creditors, no claim to the proceeds of the sale of that property which the bankrupts themselves could not have asserted in a contest exclusively between them and their mortgagees." See, also, *Burbank v. Bigelow et al.*, 92 U. S., 179, 182.

There is no doubt that the trustee under the present law takes the title subject to all equities, liens, or encumbrances, whether created by operation of law or by the bankrupt, which existed against the property in the hands of the bankrupt.

Should the court below finally determine and decree the equitable lien sought by the appellant, the trustee should, and we have no doubt the bankruptcy court would, give its proper place to such lien in the distribution of the bankrupt's estate. Such lien would be superior to the liens of judgment creditors and to the claims of general creditors. As Mr. Justice Shepard said in *Hume v. Riggs*, 12 App. D. C., 367; 26 Wash. Law Rep. 227: "Unless precluded by the terms of some statute expressly intended to change it, the rule has always prevailed that the equity under a trust or a contract *in rem* is superior to that under a judgment lien. The claimant under the contract *in rem* has an equity to the specific thing which binds the conscience of his grantor; whilst the judgment creditor, who has advanced nothing on the faith of the specific thing, is entitled only to that which his debtor really has at the time or could honestly convey or encumber; his beneficial interest and nothing more." And the court cites numerous Maryland cases sustaining the proposition that if a party makes a mort-

gage, but it proves defective by reason of some informality or omission, such as failure to record in due time or the like, the instrument binds the conscience of the mortgagor and will be enforced by a court of equity.

The courts in England and in Maryland uniformly hold that a judgment, being but a general lien, must be subordinated to the superior equities of a prior specific lien. For if the property be charged in equity before the entry of the judgment, the judgment will not affect such charge. The judgment creditor stands in the place of his debtor and can only take the property of his debtor subject to the equitable charges to which it was justly liable in the hands of the debtor at the time of the rendition of the judgment. We are aware of no statute modifying this principle in this District. See *Dyson et al. v. Simmons*, 48 Md., 213; *Alexander v. Ghiselin*, 5 Gill., 187; *Valentine v. Sless*, 79 Md., 187. It is to be remembered, however, that both judgments are alleged in appellant's bill to have been entered within four months before the adjudication of bankruptcy, and such judgments are therefore void. Section 499 of the Code does not affect the question here. For stronger reasons such an equitable lien is superior to the claims of general creditors. Creditors mentioned in the section of the Code just noted means creditors who in the interval of time have fastened upon the property for the payment of their debts and not general creditors. See *In re Schmitt*, 109 Fed. Rep., 267; *In re Shirley*, 112 Fed. Rep., 303.

We agree with appellees' counsel that the recording of the deed of trust from Jones and wife to appellant is not constructive notice to any one that Jones, then a stranger to the record title, was grantee from Mr. Ridout of the lot described in the bill.

In our opinion the learned court below erred in sustaining the demurrer and in passing the order dismissing the bill. Such order must be reversed, with costs, and the suit remanded to the court below for further proceedings not inconsistent with this opinion, and it is so ordered.

Reversed.

JOHN HENRY LANE, APPELLANT,

v.

EMMA EUDORA LANE.

ALIMONY; FAILURE TO PAY; CONTEMPT.

An order adjudging appellant in contempt of court in failing to comply with an order requiring him to pay alimony to the appellee and committing him to custody until payment should be made, affirmed.

No. 1614. Decided March 6, 1906.

APPEAL by defendant from an order of the Supreme Court of the District of Columbia, in Equity, No. 25,065, adjudging him in contempt for failure to pay alimony pending suit. Affirmed.

Mr. T. J. Mackey for appellant.

Mr. John E. McNally for appellee.

Mr. Justice DUELL delivered the opinion of the Court:

This appeal is taken from an order entered in the court below on August 15, 1905, adjudging

the defendant-appellant in contempt of court for his refusal to obey an order requiring him to pay complainant-appellee \$25 per month as alimony until otherwise ordered.

It appears that after the cause was at issue the complainant made her motion for alimony based upon the petition, answer thereto, and upon affidavits showing that the defendant was in receipt of a salary of \$100 per month. The order was entered by consent. No application to vacate or to modify the order has ever been made. After making two payments the defendant refused and neglected to make further monthly payments. Thereupon a petition was filed, setting forth the fact of non-payment, the necessities of the complainant, and the ability of the defendant to respond. An order to show cause why the defendant should not be adjudged in contempt for his refusal to obey the order of the court was then granted. The defendant made return to the order to show cause, not denying his failure to comply with the order requiring him to pay alimony, but averring in general terms his inability to make the payments. After the hearing the court made the order requiring the payment of the arrears of alimony, amounting to \$75, within five days, and in default of compliance that defendant be placed in the custody of the marshal and held until the further order of the court, or until the said sum was paid. This is the order appealed from. That the Supreme Court of the District of Columbia has power to compel obedience to an order awarding alimony by committing the party to jail if he refuses to obey it has been settled by this court. *Tolman v. Leonard*, 6 App. D. C., 224; 23 Wash. Law Rep., 343.

The appellant was in contempt of court in refusing and failing to pay the alimony in accordance with the order of the court. His answer to the order to show cause why he should not be adjudged in contempt was wholly insufficient. He did not deny that he was in receipt of a monthly salary of one hundred dollars, and his vague and general statements that he was unable to make the payments evidently did not impress the court below, nor have they convinced us. The money which he has expended upon this frivolous appeal would have enabled him to comply with the order of the court below. Appellant in his assignment of errors attacks the sufficiency of the allegations of the petition for the divorce. It is sufficient to say that an answer was filed to the petition, that the order for alimony was consented to, and that the taking of proofs before the examiner had been commenced. The merits of the case are not before us, and of course will not be considered at this time.

The order appealed from was properly granted, and it is therefore affirmed, with costs.

**Affirmed.**

A statute requiring every member of a firm engaged in the plumbing business to be a registered plumber, whether his duties require him to have a knowledge of that trade or not, is held, in *Schnaier v. Navarre Hotel & I. Co.* (N. Y.), 70 L. R. A., 722, to be an unconstitutional interference with liberty and property.

## Supreme Court of the District of Columbia.

EDWARD N. RICHARDS, APPELLANT,

v.

JACOB KEROES, APPELLEE.

LEASE; COVENANT BY LESSEE TO REPAIR; BREACH.

Subsequent to a lease which provided that the lessee should pay for all repairs, the District authorities required certain repairs and changes in the premises to properly trap and connect the down-spout to the sewer to prevent drainage of water to the adjoining premises. The lessee refusing to do the work, the lessor had it done by another; and in the doing of it the terra-cotta sewer-pipe was found to be broken, and the plumbing department required that it be replaced with a cast-iron pipe. On refusal by the lessee to pay the bill for the work, the lessor brought suit for possession. *Held*, that the facts showing that some repairs were imperatively necessary, the failure of the lessee to make or to pay for them was a breach of his covenant, and the lessor was entitled to possession.

No. 48,108. Law. Decided May 16, 1906.

HEARING (by the Court without a jury) in a landlord and tenant case appealed from a justice of the peace. Judgment for plaintiff.

*Mr. Wm. C. Prentiss* for the appellant.

*Mr. Hayden Johnson* for the appellee.

Mr. Justice BARNARD delivered the opinion of the Court:

In this case counsel have waived a trial by jury, and submitted the issue to the court on an agreed statement of facts.

The purpose of the suit is to obtain possession of premises known as 1332 G street N. W., in the city of Washington.

The justice of the peace before whom the case was brought rendered judgment, after a trial, in favor of the defendant, and the plaintiff brought the case to this court by appeal.

It appears from the statement of facts that the defendant leased the property in question, February 24, 1904, from Emma L. Johns and S. Louisa Campbell, for a term of five years, commencing April 15, 1904, for a monthly rental of \$70, payable each month in advance. Said lease was duly acknowledged before a notary public, and was recorded in liber 2898, folio 93 et seq., one of the land records of this District.

The lease provides that the tenant shall pay for all repairs, the language being "that all repairs shall be paid for by him, and that he will surrender the same, at the expiration of his tenancy, in good order, ordinary wear and tear and damage by the act of God or public enemy excepted." It further provides that if any of the covenants be not performed according to their full tenor and effect, that the lessors may terminate the tenancy, by notice in writing, of seven days, to that effect.

The plaintiff in this case purchased the said property from the lessors, receiving a deed therefor, in fee simple, about March 27, 1905.

In July, 1905, it was discovered that the water was draining into the cellar of the adjoining house, 1330 G street, which was occupied by the plaintiff, and the inspector of plumbing made an examination of the two premises, 1330 and 1332 G street, and ordered certain repairs and changes to be made in premises 1332. The work required to be done was to "properly trap and connect down-spout to sewer," which was ordered to be done within ten days, in ac-

cordance with the plumbing regulations, and the defendant was requested by the plaintiff to do the same, but refused; and thereupon the plaintiff had the said repairs made and found that the terra-cotta sewer-pipe in said premises was cracked, broken, and disconnected, and on that being inspected by the plumbing department, it was ordered replaced with cast-iron pipe, which was done by the plumber in accordance with such official order, and the said repairs were completed on August 8, 1905, at a cost of \$121.60. The bill therefor was presented by the plaintiff to the defendant, and he was requested to pay the same, but refused, and he has paid no part thereof; whereupon the plaintiff paid the said bill and thereafter, on September 29, 1905, served upon the defendant a seven-day notice that his tenancy was terminated as provided by the terms of the lease.

At the expiration of that time, suit was filed before the justice, under the landlord and tenant law, for possession.

The question presented to the court in this case is this, has the defendant failed to perform the covenant of his lease, which requires that all repairs shall be paid for by him?

After his refusal to pay the bill, it appears that the plaintiff filed in this court a suit at law, being No. 48,257, in which case the plaintiff obtained judgment for the full amount of said bill for want of a sufficient affidavit of defense as required by the seventy-third rule of this court, and from which judgment an appeal was taken by the defendant to the Court of Appeals, where the same is now pending.

It has been argued by counsel that the action of the court in entering judgment for the plaintiff in that case is conclusive upon the court in this case, and requires the court to give judgment in favor of the plaintiff. While the judgment of the court in that case might have a tendency to govern the ruling in this, still I do not feel that the same is necessarily binding or conclusive of the present case.

That judgment may rest wholly upon the failure of the defendant inadvertently to make as strong a statement of his case in his affidavit of defense as is required by the seventy-third rule; and, again, the judgment in that case might be erroneous as to a part only of the plaintiff's claim, and might be valid as to a portion of the said bill.

If any part of the work required to be done to put the property in its usual repair should properly have been done by the defendant, he has broken his covenant; and the plaintiff would be entitled to insist upon his right to possession.

It may be that the change required from a terra-cotta sewer-pipe to an iron sewer-pipe would be such a change as would be called a betterment and not a repair, but it seems quite clear that if a sewer-pipe made of terra-cotta had become unserviceable by reason of a breakage and leakage, whether the same occurred before or after the date of the lease, that the defendant, by the words of the lease, had assumed the obligation of putting it in repair. If he had offered to do so, or had tendered himself ready to pay for such repair, he might then have raised the question as to his right to refuse to pay anything by reason of the additional re-

quirement of the municipal government to replace the terra-cotta pipe by an iron pipe.

The obligation to pay for such repairs as were necessary to make the property habitable seems to have been assumed by the tenant, and, under the circumstances shown, it was imperatively necessary that some repair should have been made; and none was made by the tenant, and none paid for by the tenant, so that the court is forced to the conclusion that the covenant of the lease has been broken, and the plaintiff is entitled to insist upon his right to possession. The judgment of the court will therefore be that the plaintiff recover possession of the said premises with costs of suit.

#### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

#### Legal Notices.

##### FIRST INSERTION.

E. S. McCalmont, Solicitor

In the Supreme Court of the District of Columbia.  
Charlotte Campbell et al. v. George H. Calvert et al.  
Equity No. 23,932.

The trustees herein having reported an offer from Henry A. Vieth and Glenn E. Husted to purchase the tract of land in the District of Columbia, called "Greendale," lying between Woodridge and Langdon, containing 27.65 acres, more or less, described in the bill of complaint in this cause by metes and bounds, for the sum of \$26,460, net, payable \$7,000 in cash, \$5,000 in one year, \$5,000 in two years, and the balance in three years, from consummation of sale, on or before July 15, 1906, the deferred payments to be secured by deed of trust on the property sold, with interest payable semi-annually at 5 per annum, said offer being conditioned on the right of the purchasers to anticipate payments on the deferred payments, and to have released from the lien of the trust portions of said property in fixed proportion to the amount of the anticipated payments, which condition, with others, are fully set forth in the offer of said purchasers, a copy of which is filed in the cause with the report of the trustees; it is this 24th day of May, 1906, ordered, that said offer be accepted, and sale made thereunder be ratified and confirmed, unless cause to the contrary be shown on or before the 25th day of June, 1906, provided a copy of this order be published in the Washington Law Reporter once each of three successive weeks before said last named day. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 21-St

Benj. S. Minor, Executor

In the Supreme Court of the District of Columbia,  
Holding a Probate Court.  
Estate of Margaret R. Stone, Deceased.  
No. 12,508.

Upon consideration of the petition and report of Benjamin S. Minor, executor, filed herein on the 24th day of May, A. D. 1906, that he has sold to George H. Higbee lot 29, in square 263, being the northeast corner of 14th and F streets, in the city of Washington, District of Columbia, the same having a frontage of about 23.39 feet on F street by a depth of about 85.59 feet on 14th street, for the sum of one hundred and ninety thousand dollars (\$190,000), payable in the manner set forth in said offer, it is, this 24th day of May, A. D. 1906, by the court, adjudged, ordered, and decreed that the said sale to the said George H. Higbee be, and the same is hereby, ratified and confirmed, unless cause to the contrary be shown on or before the 25th day of June, 1906. Provided a copy of this decree be published in The Washington Law Reporter and in The Evening Star once a week for three successive weeks before said date. WENDELL P. STAFFORD, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 21-St

**Legal Notices.**

**A. A. Alexander, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Calvin Detrick, late of the State of New York, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 21st day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of May, 1906. **DANIEL W. O'DONOGHUE**, 412 5th st. N. W. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,650. Administration. [Seal.] 21-St

**R. A. Curtin, Solicitor**

**In the Supreme Court of the District of Columbia.**  
**Mary Molloy et al. v. Ellen O'Brien et al.**  
 No. 28,188. Equity Docket No. 58.

The object of this suit is to partition by sale the estate of William Santry, also known as William Sauntry, deceased, and to distribute the proceeds to heirs at law and parties entitled thereto. On motion of the complainants, it is, this 2d day of May, A. D. 1906, ordered that the defendants, Margaret Santry, John Carpenter, Joseph Carpenter, May Carpenter, and Lillie Carpenter, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in the Washington Law Reporter once a week

[Seal] for three successive weeks. By the Court: **HARRY M. CLABAUGH**, Chief Justice. True copy. Test: **John E. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. 21-St

**Wolf & Rosenberg, Attorneys**

**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**Robert F. Poore et al., Complainants, v. Joseph H. Poore et al., Defendants.** Equity. No. 25,560.

**ORDER CONFIRMING SALE NISI.**

**Maurice D. Rosenberg**, trustee, having reported to the court that he has sold the real estate situate in the county of Washington, District of Columbia, namely: all the parts of the tract of land known as "Lucky Discovery" or "Rock of Dumbarton," of which **Francis Poore**, deceased, died seized. Said land has a front on Wisconsin avenue of fifty-five (55) feet by an average depth of two hundred and ten (210) feet, and is improved by two frame dwellings, under rental, to **Byron Richards**, for the sum of thirty-three hundred dollars, it is, by the court, this 2d day of May, A. D. 1906, ordered that the said sale be ratified and confirmed unless cause to the contrary be shown on or before the 25th day of June, 1906. Provided this order be published once a week for three successive weeks in The Washington

[Seal] Law Reporter prior to said date. By the Court: **HARRY M. CLABAUGH**, Chief Justice. A true copy. Test: **J. R. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. 21-St

[Filed May 22, 1906. **J. R. Young**, Clerk.]

**C. W. Stetson and P. H. Marshall, Solicitors**

**In the Supreme Court of the District of Columbia.**  
**Charles W. Stetson, Trustee, v. Mary A. Robinson et al.**  
 Equity. No. 25,971. Doc. 57.

**ORDER NISI.**

This cause came on to be heard at this term upon the report of **Charles W. Stetson** and **Percival H. Marshall**, the trustees herein appointed by decree to sell part of original lot 2, square 579, beginning on D street 33 feet west of the southeast corner of said lot, running thence west on said street 15 feet 6 inches; thence north 32 feet; thence east 2 feet 6 inches; thence north 102 feet 6 inches; thence east 18 feet; thence south 134 feet, except the rear 7 feet 6 inches of said lot heretofore condemned by marshal's jury for an alley; that they have sold said part of said lot to **Charles H. Parker** for \$2,350. It is, this 2d day of May, 1906, ordered, adjudged, and decreed that the said sale be ratified and confirmed unless cause to the contrary be shown on or before the 23d day of June, 1906. Provided a copy of this order be published once a week for three successive weeks before the last-named date in The Washington Law Reporter. **WENDELL P. STAFFORD**, Justice.

A true copy. Test: **J. R. Young**, Clerk, by **J. W. Latimer**, Asst. Clerk. 21-St

**Legal Notices.**

**Chas. W. Darr and Richard A. Curtin, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the State of New Jersey, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Mary L. Porter**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the 21st day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of May, 1906. **WALTER E. ENNIS**, Lambertville, N. J. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,518. Administration. [Seal.] 21-St

**Albert Sillers, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **John F. Kelly**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 4th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of May, 1906. **MARY E. BRENNAN**, 825 8th st. N. E. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,544. Administration. [Seal.] 21-St

**S. R. Bond, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Lowder Dashiell**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of May, 1906. **J. MURDOCH CLARK**, 2 M st. S. W. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,632. Administration. [Seal.] 21-St

**Hayden Johnson, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Elizabeth J. Reynolds, Deceased.**  
 No. 13,498. Administration Docket.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by **Alexander Reynolds**, and **Joseph Walter Reynolds**, it is ordered this 24th day of May, A. D. 1906, that **Barbara Reynolds**, **Frederick Reynolds**, **Josephine Reynolds**, and all others concerned, appear in said court on Monday, the 25th day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than

[Seal] thirty days before said return day. **WENDELL P. STAFFORD**, Justice. Attest: **Wm. C. Taylor**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 21-St

**Blair & Thom, Attorneys**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Frances Oliver Johnson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of May, 1906. **LOREN B. T. JOHNSON**, 1211 Connecticut ave. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,634. Administration. [Seal.] 21-St

**Legal Notices.****Thompson & Laskey, Solicitors****In the Supreme Court of the District of Columbia.****Mary J. Cooper, Complainant, v. Thomas E. Wagman et al., Defendants. Equity, No. 26,979.**

Upon consideration of the report of Ralph Given, trustee, of the sale of the property known as No. 701 Twenty-second street Northwest, at and for the sum of three thousand and eight hundred dollars, cash, this day filed in this cause, it is, this 21st day of May, A. D. 1906, ordered that the said sale, as made and reported by the said trustee, be and the same is hereby ratified and confirmed, unless cause to the contrary thereof be shown on or before the 25th day of June, A. D. 1906; provided a copy of this order be published in The Evening Star and The Washington Law Reporter once a week for three successive weeks prior to the date last aforesaid. WENDELL P. STAFFORD, Justice.

[Seal] True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 21-St

**Barnard & Johnson, Attorneys****Supreme Court of the District of Columbia, Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John B. Simmons, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 18th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of May, 1906. CLARA B. SIMMONS, 718 19th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,345. Administration. [Seal.] 21-St

**SECOND INSERTION.****Blair & Thom, Attorneys****Supreme Court of the District of Columbia, Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William E. Garnett, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 14th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 14th day of May, 1906. ELLEN G. MARSHALL, MARY E. GARNETT, NANNIE B. GARNETT, 2000 I st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,464. Administration. [Seal.] 20-St

**Sheehy & Sheehy, Attorneys****Supreme Court of the District of Columbia, Holding Probate Court.****Estate of Joseph P. Brass, Deceased. No. 13,637. Administration Docket —.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Thomas P. Brown, it is ordered this 14th day of May, A. D. 1906, that Howard Smith and Julia Smith Bee, of Allegheny County, State of Pennsylvania, and the unknown heirs at law and next of kin of said deceased, if any there be, and all others concerned, appear in said court on Monday, the 25th day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 20-St

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**Legal Notices.****Wm. E. Ambrose, Attorney****Supreme Court of the District of Columbia, Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Rosena Auth, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of May, 1906. ANNIE M. LAUER, 1201 B st. N. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,601. Administration. [Seal.] 20-St

**Blair Lee, Attorney****Supreme Court of the District of Columbia, Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Benjamin H. Buckingham, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of May, 1906. MARGARET C. BUCKINGHAM, 1625 H st. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,668. Administration. [Seal.] 20-St

**R. A. Curtin, Solicitor****In the Supreme Court of the District of Columbia.****Mary Molloy et al. vs. Ellen O'Brien et al.****No. 24,188. Equity Docket No. 58.**

The object of this suit is to partition by sale the estate of William Santry, also known as William Sauntry, deceased, and to distribute the proceeds to heirs at law and parties entitled thereto. On motion of the complainant, it is this 17th day of May, A. D. 1906, ordered, that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks. By the court: HARRY M. CLABAUGH, Chief Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 20-St

**Blair and Thom, Attorneys****Supreme Court of the District of Columbia, Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Irene H. Stansbury, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of May, 1906. WILLIAM CORCORAN HILL, No. 1724 H street N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,667. Administration. [Seal.] 20-St

**Ormsby McCammon, Attorney****Supreme Court of the District of Columbia, Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the State of Pennsylvania, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Robert Armstrong late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of May, 1906. E. A. WEIR, Perth, Ontario, Canada. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,603. Administration. [Seal.] 20-St



**Legal Notices.****J. Paul Earnest, Solicitor****In the Supreme Court of the District of Columbia.****Champe B. Thornton et al. v. Jennie T. Powers et al.**  
Equity, No. 21,956.

Upon consideration of the report of John P. Earnest, trustee, filed herein it is, this 17th day of May, A. D. 1906, ordered that said trustee be authorized to accept the offer of Heber L. Thornton to purchase at private sale for twenty-five hundred dollars (\$2,500), lots 10, 11, and 12, in block 12, and lots 1 and 2, in block 8, of the lots decreed to be sold in the above-entitled cause, and further that said sale of said lots be ratified and confirmed, unless cause to the contrary be shown on or before the 18th day of June, A. D. 1906; provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said date. HARRY M. CLA-

BAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 20-3t

**R. Golden Donaldson, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of John M. Welby, Deceased.**  
**No. 13,313. Administration Docket —.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Adelaide G. Welby, it is ordered this 11th day of May, A. D. 1906, that Harry E. Welby, Stag Hotel, Van Buren street, Chicago, Ill., and all others concerned, appear in said court on Thursday, the 21st day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day.

[Seal] WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 20-3t

**W. E. Ambrose, Solicitor****In the Supreme Court of the District of Columbia.**

**Charles W. H. Stock v. Frederick Stock et al.**  
**No. 26,090. Equity Doc. No. 58.**

The object of this suit is to have partition by sale of lot numbered one hundred and seventeen (117) in Frank J. Dieudonne and others' subdivision of square numbered one hundred and fifty-one (151), as said subdivision is recorded in the office of the surveyor of the District of Columbia, in book 17, page 181, in the city of Washington, District of Columbia, the distribution of the proceeds of sale to the parties entitled thereto and incidental relief prayed for in the bill of complaint. On motion of the complainant, by Wm. E. Ambrose, his solicitor, it is, this 14th day of May, A. D. 1906, ordered that the defendant, William Stock, alias William Stock, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and The Washington Times once a week for three successive weeks prior to said return day. By the Court:

[Seal] HARRY M. CLABAUGH, Chief Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 20-3t

**E. H. Thomas, Solicitor****In the Supreme Court of the District of Columbia.**

**Mattie P. Billingsley v. Chastain M. Billingsley, Wilda Wade.** No. 26,198. Equity Docket No. 58.

The object of this suit is to obtain a divorce from the bond of marriage now existing between complainant and defendant Billingsley because of the alleged adultery of said defendant with the co-respondent, Wilda Wade. On motion of the complainant, it is, this 9th day of May, A. D. 1906, ordered that the defendant Wilda Wade cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and the Evening Star once a week for three successive weeks. By the court: HARRY M. CLA-

BAUGH, Chief Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 20-3t

**Legal Notices.**

**Jesse H. Wilson and Jesse H. Wilson, Jr., Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**Estate of Hiram R. Smith, Deceased.**  
**No. 13,612. Administration Docket —.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Bernard T. Janney, executor thereunder, it is ordered this 15th day of May, A. D. 1906, that Ida M. Smith, Arthur C. Smith, Frederick M. Smith, Stella Smith, Helen Smith, Harry Smith, Burton Smith, and Ralph Smith, and all others concerned, to appear in said court on Tuesday, the 19th day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAF-

[Seal] FORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 20-3t

**J. Dawson Williams, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of John Crane, Deceased.**  
**No. 13,677. Administration Docket —.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by J. Dawson Williams, it is ordered, this 15th day of May, A. D. 1906, that Michael, Daniel, Patrick and James Crane, otherwise known as Cream, the unknown heirs at law and next of kin of John Crane, deceased, and all others concerned, appear in said court on Tuesday, the 19th day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WEN-

[Seal] DELL P. STAFFORD, Justice. Attest: M. J. Griffith, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 20-3t

**THIRD INSERTION.****Geo. C. Aukam, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Mary C. Pryor, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of April, 1906. CHAS. H. BRUCE, [616 Corcoran st. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,627. Administration. [Seal.] 19-3t

**Wolf & Rosenberg, Attorneys**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of George Cohen, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 7th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of May, 1906. JULIUS COHEN, 1100 7th st. N. W. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,640. Administration. [Seal.] 18-3t

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**Legal Notices.**

**Wilson & Barksdale, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**In re Estate of Harriet Seton Harris, Deceased.**

No. 18,588.  
 Application having been made herein for the probate of the last will and testament of Harriet Seton Harris, deceased, and for letters testamentary on said estate by Fannie C. Willis, the executrix therein named, it is ordered this 8th day of May, A. D. 1906, that George McAllister Harris, and all others concerned, appear in said court on the 11th day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Provided notice hereof be published in The Washington Law Reporter and Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **WENDELL F. STAFFORD, Justice.** A true copy. Attest: **Wm. C. Taylor, Deputy Register of Wills.** 19-St

**John B. Larner, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Sarah E. McDonough, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of May, 1906. **THE WASHINGTON LOAN AND TRUST CO.,** Andrew Parker, Treasurer. Attest: **WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 18,638. Administration. [Seal.] 19-St

**Edward L. Gies, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William F. Partlow, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of May, 1906. **MARY ELIZABETH GAEGLER, 1523 8th st. N. W.** Attest: **WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 18,629. Administration. [Seal.] 19-St

**Geo. C. Gertman, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Margaret Adams, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the 8th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of May, 1906. **WILLIAM FRANCIS ADAMS, 1106 N. Y. ave. N. W.** Attest: **WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 18,576. Administration. [Seal.] 19-St

**Brandenburg & Brandenburg, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Henry Kimmel, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of December, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of December, 1906. **ANNIE KIMMEL, 608 Louisiana ave.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 18,504. Administration. [Seal.] 19-St

**Legal Notices.**

**Jas. F. Bundy, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Deiliah Bacon, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 7th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of May, 1906. **GEORGE R. BROWN, 1639 4th st. N. W.** Attest: **WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 18,562. Administration. [Seal.] 19-St

**Leckie, Fulton & Cox, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Margaret McHenry, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 4th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of May, 1906. **WILLIAM A. FOY, Columbian Building.** Attest: **WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 18,648. Administration. [Seal.] 19-St

**Wilson and Barksdale, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Minson W. Boutwell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 4th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of May, 1906. **NANNIE B. CROSWELL, 1223 Emerson st. N. E.** Attest: **WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 18,556. Administration. [Seal.] 19-St

**P. E. Hilliard, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Margaret Carroll, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 4th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 4th day of May, 1906. **WILLIAM H. MCGRANN, 506 F st., N. W.; MARY ELLEN HALPIN, 1680 Third st., N. W.** Attest: **WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 18,546. Administration. [Seal.] 19-St

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Catharine Levi, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of May, 1906. **THE WASHINGTON LOAN & TRUST CO.,** Andrew Parker, treasurer. Attest: **WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 18,555. Administration. [Seal.] 19-St

**Legal Notices.**

**Carlisle & Johnson, Attorneys**  
 Supreme Court of the District of Columbia,  
 Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of James H. Forsyth, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 4th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of May, 1906. MARY ANN FORSYTH, 1803 Belmont road. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,642. Administration. [Seal.] 19-3t

**Alex. H. Bell, Attorney**  
 Supreme Court of the District of Columbia,  
 Holding Probate Court.

**Estate of Patrick Crowe, Deceased.**  
 No. 13,609. Administration Docket —.

Application having been made herein for letters of administration on said estate by Dr. John W. Crowe, it is ordered this 10th day of May, A. D. 1906, that Margaret Maloney nee Crowe, Bridget Gallaher nee Crowe, and all others concerned, appear in said court on Friday, the 15th day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Times once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day. [Seal] WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 19-3t

**J. J. Darlington, Attorney**  
 In the Supreme Court of the District of Columbia.  
 Special Term for Probate Business.  
 In the Matter of the Estate of Henry Murray, Deceased.

No. 13,681. Admn. Doc. —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by B. Francis Saul and Patrick Smyth, it is ordered this 11th day of May, A. D. 1906, that Daniel Murray, and all others concerned, appear in said court on Tuesday, the 12th day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 19-3t

**F. Sprigg Perry, Solicitor**

In the Supreme Court of the District of Columbia.  
**Henry Riggs Rathbone, Committee, Plaintiff, v. Henry Reed Rathbone, Insane, Henry Riggs Rathbone, Gerald Laurence Rathbone, Clara Pauline Randolph, Defendants.** Equity, No. 26,194.

The object of this suit is to ratify the agreement of April 1, 1904, by and between the Cosmos Club of Washington, District of Columbia, on the one part, and Henry Riggs Rathbone, both as committee of Henry Reed Rathbone, insane, and by said Henry Riggs Rathbone, Gerald Laurence Rathbone, and Clara Pauline Randolph, for the sale of lot 28 of Harvey Kennedy et al., trustees, subdivision of lots 12 and 15, and parts of lots 18 and 14 in square No. 221, in the city of Washington, District of Columbia, as per plat recorded in the office of the surveyor of the District of Columbia, in liber W. B. M., folio 39, and to authorize the sale of this lot, situate as aforesaid, upon the terms set forth in the bill of complaint. On motion of the complainant, it is, this 8th day of May, A. D. 1906, ordered that the defendant, Henry Reed Rathbone, insane, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon. 19-3t

**Legal Notices.**

**John Ridout, Attorney**  
 Supreme Court of the District of Columbia,  
 Holding Probate Court.

**Estate of Joshua Bishop, Deceased.**  
 No. 13,620. Administration Docket —.

Application having been made herein for probate of the last will and testament and codicil of said deceased, and for letters of administration with will annexed to Mary A. Rogers on said estate, by Nannie A. McLemore, a devisee, it is ordered this 8th day of May, A. D. 1906, that Thomas J. Bishop, Presley Alexander, Lee Moore, Roy Moore, Mattie Moore, and Fannie Devin, and all others concerned, appear in said court on Friday, the 15th day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Evening Star, once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 19-3t

**Geo. H. White, Attorney for Plaintiff**  
 In the Supreme Court of the District of Columbia.  
**Ferdinand L. Bornett, Plaintiff, v. Israel Dorsey, Defendant.** At Law, No. 48,442.

The object of this suit is to recover from the defendant, Israel Dorsey, the sum of \$600.00, with interest at the rate of six per cent per annum from the 14th day of August, 1903, the said sum of money so claimed by the plaintiff being the amount paid by said Ferdinand L. Bornett for the use, benefit, and behoof of said Israel Dorsey, at his request, according to particulars of the defendant filed in this cause, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 4th day of May, 1906, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. By the [Seal] Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Alf. G. Buhrman, Asst. Clerk. 19-3t

**Edward S. Bailey, Attorney**  
 Supreme Court of the District of Columbia,  
 Holding Probate Court.

**Estate of William Walter, Deceased.**  
 No. 13,626. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by Dora Kramer, it is ordered this 9th day of May, A. D. 1906, that the unknown heirs at law and next of kin of William Walter, deceased, and all others concerned, to appear in said court on Tuesday, the 12th day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times, once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 19-3t

**James F. Bundy, Attorney**  
 Supreme Court of the District of Columbia,  
 Holding Probate Court.

**Estate of Hyson I. Bossie, Deceased.**  
 No. 13,639. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Thomas M. Greene and Daniel B. Webster, it is ordered, this 11th day of May, A. D. 1906, that notice be and hereby is given to James H. Bossie, and all others concerned, to appear in said court on Tuesday, the 12th day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 19-3t

**Legal Notices.**

**H. G. Kimball, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Sallie R. Reeves v. J. Edgar Reeves et al.**  
 No. 26,204. Equity Docket, No. 58.

The object of this suit is to obtain an absolute divorce. On motion of the complainant, it is, this 7th day of May, A. D. 1906, ordered that the defendants, J. Edgar Reeves and Grace Dawson, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Times. By the court:  
 [Seal] **HARRY M. CLABAUGH, Chief Justice.** True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 19-37

**Irving Williamson, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
 This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John Prioleau, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of May, 1906. **LIZZIE V. PRIOLEAU, 1930 14th St. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,955. Administration. [Seal.]** 19-37

**Perri W. Frisby, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
 This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Fannie Chapman, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 9th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of May, 1906. **JOHN C. NORWOOD, 1632 Kalorama Road. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,218. Administration. [Seal.]** 19-37

**D. W. O'Donoghue, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**In re Estate of James Dorsey, Deceased.**  
 No. 13,149. Adm. Doc. —.  
 DECREE.  
 Upon consideration of the report of Daniel W. O'Donoghue, executor, filed herein on the 8th day of May, A. D. 1906, that he has sold part of original lot 4, in square 29, in the city of Washington, in the District of Columbia, described as follows: Beginning at a point on the south line of I street distant twenty (20) feet east from the northwest corner of said lot and running thence south eighty (80) feet to the south line of said lot; thence east twenty (20) feet; thence north eighty (80) feet to the said south line of I street and thence west along said south line of I street twenty (20) feet to the place of beginning, for the sum of \$2,700.00 to Michael Dorsey, it is by the court, this 8th day of May, A. D. 1906, adjudged, ordered, and decreed that the said sale be and it is hereby ratified and confirmed, unless cause to the contrary be shown on or before the 11th day of June, 1906. Provided a copy of this decree be published in the Washington Law Reporter and in The Washington Times, once [Seal] a week for three successive weeks before said date. **WENDELL P. STAFFORD, Justice.** A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 19-37

**FOURTH INSERTION.**

[Filed May 2, 1906. J. R. Young, Clerk.]  
**Arthur G. Bishop, Joseph N. Saunders, Attorneys**  
**In the Supreme Court of the District of Columbia.**  
**Terrence J. McMahon v. John Sayle.**  
 Equity 26,199. Doc. 58.  
 The object of this suit is to perfect complainant's title to the west 77 feet front on F street by the full depth thereof of original lot five (5), in square one hundred and three (103), in the city of Washington, D. C. On motion of the complainant, by Bishop and Saunders, his solicitors, it is, this 2d day of May, 1906, ordered that the defendant and his unknown heirs, devisees, and assignees, if he be dead, cause his or their appearance to be entered herein on or before the first rule day occurring after the expiration of forty days, exclusive of Sundays and legal holidays, from the date of the first publication of this order; otherwise this cause will be proceeded with as in case of default. This order shall be published in The Washington Law Reporter and The Washington Post once a week for four successive weeks before said return day, sufficient cause having been shown for dispensing with a longer period of publication.  
 [Seal] By the Court: **WENDELL P. STAFFORD, Justice.** A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 18-41

**Legal Notices.**

tors, it is, this 2d day of May, 1906, ordered that the defendant and his unknown heirs, devisees, and assignees, if he be dead, cause his or their appearance to be entered herein on or before the first rule day occurring after the expiration of forty days, exclusive of Sundays and legal holidays, from the date of the first publication of this order; otherwise this cause will be proceeded with as in case of default. This order shall be published in The Washington Law Reporter and The Washington Post once a week for four successive weeks before said return day, sufficient cause having been shown for dispensing with a longer period of publication.  
 [Seal] By the Court: **WENDELL P. STAFFORD, Justice.** A true copy. Test: J. R. Young, Clerk, by W. E. Williams, Asst. Clerk. 18-41

**M. J. Keane, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Holding Equity Court.**  
**Michael McDonnell, Complainant, v. The Unknown Heirs, Assignees, and Devisees of William Wham, William Stewart, John Ridgeway, Defendants.** In Equity, No. 25,721.  
 The object of this suit is to declare the title to lots 13, 14, 15, 18, 19, 20, and 21 of Brawner's subdivision of original lots 17 and 18, in square 1277, as the same is known and described on the ground plan of plat of city of Washington, District of Columbia, to be good in fee simple in the complainant by adverse possession. On motion of the complainant, by Michael J. Keane, his solicitor, it is, this 10th day of November, 1905, ordered that the defendants, the unknown heirs, assignees, and devisees of William Wham, William Stewart, and John Ridgeway, and each of them, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of the period of publication hereinafter described; otherwise this cause will be proceeded with as in case of default. Good cause having been shown, it is not necessary that this order should be published for a longer period than herein required. This order shall be published in The Law Reporter and The Washington Post once a week for four successive weeks before the first rule day occurring after [Seal] the day of the first publication. **THOS. H. ANDERSON, Justice.** A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 18-41

**EIGHTH INSERTION.**

**Leon Tobriner and Byron U. Graham, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Isador Neuberger, Trustee, v. Charles W. Dant et al.**  
 No. 25,888. Equity.  
 The object of this suit is to perfect complainant's title to part of lot lettered "G" in Benjamin Pollard's subdivision of part of square numbered five hundred and seventy (570) as per plat recorded in liber N. K., folio 177, of the records of the office of the surveyor of the District of Columbia, described as follows: Beginning for the same on "D" street at the southwest corner of said lot, and running thence east on said street seventeen (17) feet six (6) inches; thence north one hundred and twenty (120) feet to a public alley fifteen (15) feet wide; thence west on said alley seventeen (17) feet six (6) inches to the northwest corner of said lot; and thence south one hundred and twenty (120) feet to the place of beginning. On motion of the complainant, by his solicitors, Leon Tobriner and Byron U. Graham, it is this seventh (7) day of March, A. D. 1906, ordered that the defendants, Annie Middleton, Edith LeFreux, Fannie Mullen, George Dant, Allan Dant, Victor Dant, Frances F. Hurley, George J. Hurley, and William E. Hurley, cause their appearance to be entered herein on or before the fortieth (40th) day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs, assignees, and devisees of Richard T. Queen, cause their appearance to be entered herein on or before the first rule day occurring three months after the publication of this order; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks prior to said first return day and twice a month for three successive months prior to said latter return day (the last publication to include one of the former publications) in The Washington Law Reporter and The Washington Times. By the court: **HARRY M. CLABAUGH, Chief Justice.** A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. mar. 9-16-25-30; apr 20-27; may 18-25-1906

Justice blanks of every description for sale at this office.

# The Washington Law Reporter

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WASHINGTON, D. C. - - - - - JUNE 1, 1906

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### Retirement of Mr. Justice Brown.

Mr. Justice Henry B. Brown, whose retirement from the Supreme Court of the United States was announced in that court on Monday, May 28, 1906, was the guest of honor at a dinner tendered by the Bar Association of this District at the New Willard, on Thursday evening, May 31. The gathering was a notable one, and included among those in attendance were the President, Vice-President, and representatives of the judicial, executive, and legislative departments of the Government.

President Roosevelt, in responding to the toast "The President," paid high tribute to Mr. Justice Brown and the service rendered by him to the country, and also to the court of which he had been a member, expressing the opinion that there was no body of men of equal numbers possessing the combined dignity and power that inhere in the Supreme Court. "Owing to the peculiar constitution of our Government, the man who does his full duty on that court must of necessity be not only a great jurist, but a great constructive statesman. It has been our supreme good fortune as a nation that we have had on that court from the beginning to the present day men who have been able to carry on in worthy fashion the tradition which has thus made it incumbent upon the members of the court to combine in such fashion the qualities of the great jurist and of the constructive statesman."

Following the President, Mr. Wm. F. Mattingly, who acted as toastmaster, referred feelingly to the great services rendered by Mr. Justice Brown upon the bench. In response, Justice Brown spoke briefly, expressing his appreciation of the sentiment which prompted the occasion, and indulging in "reminiscences of the bench."

Other speakers were Mr. Justice Harlan, Vice-President Fairbanks, Secretary Root, Speaker Cannon, and Mr. William A. Maury, all paying tribute to the brilliant career of Mr. Justice Brown during his thirty years of service on the bench.

THE summer examination of applicants for admission to the bar of the Supreme Court of the District of Columbia will be held on Friday and Saturday, June 22 and 23, 1906. Blank petitions for leave to take the examination may be had on application to the secretary of the examining committee, Mr. Ralph Given. Applicants should file their papers with the clerk of the court not later than Monday, June 18, 1906.

THE Supreme Court of the United States has affirmed the judgment of the Court of Appeals of this District in the case of McDermott, Receiver, v. Severe. The plaintiff, a child of seven years, was run down by an electric car while his foot was caught between the rails and the boards at a suburban crossing, and it became necessary to amputate one of his legs. The jury returned a verdict in his favor for \$15,000, upon which there was judgment, and this judgment was affirmed by the Court of Appeals. See 33 Wash. Law Rep., 226. The case was then taken on writ of error to the Supreme Court of the United States, and, as above stated, the judgment affirmed by that court.

### Interest on Open Account—Tender.

In *Harding et al. v. York Knitting Mills*, decided by the United States Circuit Court for the Middle District of Pennsylvania (142 Fed., 228), the court, while recognizing the general rule that interest is not recoverable as a matter of course on open accounts, says that a distinction is made where goods are sold on a definite term of credit. In such case interest runs from the date when the account becomes due; and unless there is a dispute as to the amount, or there are deductions or discounts to be adjusted and settled, a demand is unnecessary, but the account is presumed to be correct, and assumes the character of a liquidated or settled account.

on which interest becomes due. It is also held that a plea of tender must state how and to whom it was made, as well as the amount tendered, in order that the court may see that as matter of law the tender was good.

**Bankruptcy—Rights of Partnership Creditors in Individual Assets of Partners.**

The Bankruptcy Act of 1898, Ch. 541, sec. 5f, provides that "the net proceeds of the partnership property shall be appropriated to the payment of the partnership debts, and the net proceeds of the individual estate of each partner to the payment of his individual debts," but that any surplus remaining of either estate shall be added to the other. The United States District Court for the Northern District of West Virginia held, recently (*In re Henderson*, 142 Fed., 588), that this provision limits the right of a partnership creditor to share in the estate of a partner in all cases to the surplus which may remain after his individual debts are paid; and there is no exception, even where the partnership has no assets and no solvent partner.

**Carriers—Ejection of Passenger—Tickets—Evidence—Identification.**

In *Brigham v. Southern Pacific Co.*, decided by the Court of Appeals, Second District, California, in December, 1905 (84 Pac., 306), it was held that where a passenger purchased a ticket by which he agreed to identify himself as the original purchaser, when required by the carrier's conductor or agent, and that unless all the conditions of the ticket were fully complied with it should be void, the carrier having obtained information that the passenger had endeavored to sell the ticket to a broker, and proof of such fact having been admitted in an action for ejection while the passenger was attempting to ride on such ticket, because of his refusal to sufficiently identify himself as the purchaser, it was error for the court to exclude evidence that the train agent who refused the ticket had knowledge that an attempt had been made by the purchaser to sell the same.

It was further held that where the purchaser of a railroad ticket agreed to identify himself as the original purchaser, when required by the carrier's conductors or agent, he was only required to produce such evidence of his identity within his reach as ought to satisfy a reasonable man honestly seeking to do justice between the carrier and the passenger, and hence instructions that he was bound to identify himself "to the satisfaction of the train agent" were properly refused.

A statute making it a misdemeanor to give Christian Science treatment for a fee is held, in *State v. Marble* (Ohio), 70 L. R. A., 835, not to be an interference with the rights of conscience and of worship.

**Court of Appeals of the District of Columbia.**

**NAPOLEON B. DOTSON, APPELLANT,**

**v.**

**WILLIAM H. MILLIKEN.**

**AGENCY; AGENT TO FIND PURCHASER; FAILURE OF SALE CAUSED BY FAULT OF PRINCIPAL; AGENT'S COMPENSATION; EVIDENCE; BURDEN OF PROOF.**

1. When an agent employed for the purpose procures a purchaser for real estate who is able and willing to buy on the authorized terms, he becomes entitled to his compensation although the sale may not be consummated, provided the consummation is prevented by the refusal, fault, or defective title of the principal.
2. A contract construed, and held to require the agent to find a purchaser ready, able, and willing to buy on the principal's terms and in accordance with his representations of material facts, and not to require or even empower the agent to effect an actual sale by a binding and enforceable agreement.
3. Held, therefore, that where the agent found a purchaser for 10,000 acres of coal land who was ready, able, and willing to make the purchase, but the sale was not consummated because a representation by the owner to the effect that a railroad company had agreed to construct a branch railroad into the said lands was found to be inaccurate, the agent was entitled to the stipulated compensation.
4. In an action by the agent to recover the agreed compensation, the proof as to the corporate existence of the purchaser found by the agent and as to its power to make the purchase, held sufficient for the purposes of the case, where it was shown that the defendant had accepted the purchase without condition or inquiry, and that the sale had fallen through solely by reason of his failure to make good his representation as to the construction of a branch railroad into the lands.
5. Whether in actions by agents generally to recover commissions for procuring purchasers, the burden is upon the agent to show the ability of the purchaser to pay the consideration, *quere*; but when the principal accepts the purchaser found by the agent without question of his ability to perform, and the sale fails of consummation by his own fault or failure to make good his offer, the burden is on him, in order to defeat the agent's right to compensation, to show the purchaser's want of ability.
6. Where an agent employed to find a purchaser for the whole or any considerable part of a tract of coal lands found a purchaser for 10,000 acres thereof who was accepted by the principal, but the sale failed of consummation through the fault of the principal, held that the agent was entitled to his compensation even though the description of the 10,000 acres contained in the proposal to purchase that portion of the larger tract was too uncertain to be made the subject of an enforceable contract between vendor and purchaser.

No. 1642. Decided May 1, 1906.

**APPEAL** by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 45,930, entered upon a verdict for plaintiff in an action of assumpsit. **Affirmed.**

*Mr. George C. Hazleton, Mr. James H. Ward, and Mr. A. S. Worthington* for the appellant.

*Mr. J. J. Darlington* for the appellee.

*Mr. Chief Justice SHEPARD* delivered the opinion of the Court:

This is an appeal from a judgment for \$25,000 rendered in an action of assumpsit.

The declaration of the plaintiff, William H. Milliken, alleged the following facts substantially: In April, 1902, the defendant, Napoleon B. Dotson, represented to plaintiff that he owned and controlled 124,000 acres of coal lands situated in Letcher and Harlan counties, in the State of Kentucky; that he had secured an agreement with the Southern Railway Com-

pany to construct a branch railway into said lands, and that he desired to secure a purchaser for either the whole or a considerable part of said lands at and for the price of \$20 per acre; that if plaintiff would find a purchaser at said price defendant would allow and pay him \$2.50 for each acre for which he should find a purchaser; that relying upon such representations and promise, plaintiff applied himself diligently to find a purchaser or purchasers, and after much labor and the expenditure of much time and about \$2,500 in money during the space of five months, procured and furnished a responsible purchaser, namely, the Tri-State Coal and Coke Company of Pittsburgh, Pa., which was, on to wit, September 15, 1902, ready, able, and willing to purchase 10,000 acres of said lands at \$20 per acre in cash, subject only to the truth of defendant's representations in respect of the construction of the railway into said lands; that it then transpired that the defendant's said representations were untrue, and that there had been no agreement to construct said railway; that had it not been for the said representations plaintiff would not have undertaken to find a purchaser; that for the reason aforesaid, and without plaintiff's fault, the said purchaser declined to proceed further in the matter of purchase. A second count stated the same facts substantially, and was followed by the ordinary common counts. Defendant filed several pleas, which were stricken out, and the case was submitted on his plea of non-assumpsit.

Plaintiff introduced evidence tending to show the following facts in support of his declaration: That he heard of the proposed sale of defendant's lands in April, 1902, and received a letter from defendant dated April 24, 1902, relating to the offer of sale and suggesting a meeting, and containing the following paragraph: "We have arranged with R. R. companies to build a branch into it and develop the lands." A typewritten, unaddressed letter accompanied this, which, after describing the rich veins of coal in the lands, contained this statement: "We have an understanding with the railroads near the lands, by which they are to build a branch into the same for us as soon as we are ready to open up coal veins and put in coke plants." A prospectus was inclosed also, which contained a lengthy description of the lands, the extent of the coal seams, and an extract from the official report of the State geologist, John R. Procter, showing that the coal of the particular region was of an excellent quality. It contained a statement of the nearest railway lines and that, "the L. and N. and Southern railways have both offered to build into this property at once," and the following: "The property having been made up by grouping together smaller tracts, it will be sold in any size tracts to suit purchasers, and can be laid off and sold in separate blocks, so as to render each block desirable and well located for coal and coke plants, or it will be sold together," etc. That by appointment, he met defendant in Washington on April 30, and told him he was familiar with the section and knew the land and its value, but that the important thing was the railway to get to market. That defendant said he had an arrangement with Spencer of the Southern Railway to build

a road in there from Middleboro at once, and that the surveyors were in there locating a line from Middleboro to Harlan Court House, which is just at the edge of the land. That he then agreed with defendant to visit Pittsburgh and secure purchasers for the property at \$20 per acre, and defendant agreed to pay him \$2.50 per acre for every acre that he could sell in such quantities as he could find purchasers for; plaintiff to pay his own expenses. That plaintiff would not have gone into the matter without the assurance as to the railway, because it was necessary to the utilization of the coal. That plaintiff at once went to Pittsburgh and began negotiations with parties there. That the first question asked him by them was in regard to the contract for the railway construction; and upon plaintiff's replying that he had not made the contract, but that defendant had represented to him that there was such an arrangement, Easter, of the Tri-State Coal and Coke Company, with whom he was dealing, insisted that plaintiff should have something in writing from defendant to that effect. That, communicating this fact to defendant, he received a letter from him, dated May 3, in which he referred to the general nature of the land, advantages, etc., but the only reference to the railway was in the following language: "This is property which will be developed by the building of the R. R. through it at once, which will increase the value of it several times over." That the Pittsburgh people were not satisfied, as they feared there were some conditions attached in regard to building the road, and insisted that plaintiff should state what conditions, if any, were attached. That on May 8 plaintiff, in carrying out this suggestion, sent the following telegram to the defendant, who was then in New York: "See Spencer and write me to-night how much development he will require before building road into property. Would two hundred coke ovens be sufficient to start with?" That a letter of the same date in reply was received in due course of mail, which contained the following: "I have already discussed fully with Mr. Spencer the point with reference to extent of development he would like to have on the property to commence with, and am glad to say that Mr. Spencer is willing to build the road into the property without placing any requirements on the property holders to put in certain sized plants, or any number of coke ovens. I have explained fully to Mr. Spencer our plans for the development of the land, and he is now ready to commence work on the road just as soon as we are ready for him to do so, and we can use our own judgment to the extent of the development we would put on the lands to commence with. Mr. Spencer has investigated the situation and knows the Southern and Louisville and Nashville Railroad can furnish a market for a vast amount of coal and coke from this field."

That Easter seemed satisfied with this letter which was shown to him, and agreed that he would take the matter up if plaintiff would procure samples of the coal and have it tested in Pittsburgh to see if it would make good coke. That plaintiff went to Wise County, Virginia, where defendant lived, and with a friend, un-

der the direction of a guide furnished by the defendant, rode over the mountains and spent a week inspecting the lands. That he returned to Pittsburg May 27 with samples of coal, the first analysis of which was not satisfactory; but a second was better. That Easter was pleased and proposed to go with plaintiff to see the lands in company with a mine expert. That correspondence passed between plaintiff and defendant at frequent intervals. One letter from defendant dated May 29, and relating to sending samples of coal, had this postscript: "I understand the Southern Ry. Co. has secured their right of way with exceptions of through one or two tracts from Middleboro to Harlan O. H. I hope, however, Mr. Spencer will call his men out and keep them out until we get our tracts rounded up as we have requested him to do. I presume your people will be in a position to give us a definite answer as soon as they have tested the coal. We have another proposition from a party wanting an interest down there and would like to have your people conclude as soon as possible." Another letter of defendant, dated June 12, expressed satisfaction with the result of the experiments with the coal and said: "The engineers are now locating the line of the Southern into our property. It would not be necessary for me to accompany Mr. Easter to see Mr. Spencer, as Mr. Spencer's plans are already fixed; he would not hesitate to say to Mr. Easter that he will build the road into that section at once." In another of July 8, replying to a complaint of plaintiff that one Ingraham had offered the same lands for \$15 per acre, and explaining the same by stating that the price had been raised by reason of the railway arrangement, he said: . . .

"the R. R. is now located too near the property and work will soon be vigorously pushed, and, of course, price will very soon be higher." That a letter of July 9 contained the following: . . . "and if your parties get advantage of this low price they will have to act promptly, as R. R. will soon be built and the price will advance greatly. How much do your people want? Do they want the entire tract or do they want only part of it? If you will let me know the exact number of acres they want to purchase, if they find the coal satisfactory upon further investigation, I will place you in a position to give them refusal of the property for sufficient time to look it over and say whether or not they want it . . . We are now having titles abstracted, surveys made, etc., and no long option will be given on the property. Appreciating the amount of work and expense you have been to in trying to handle the property, we will give your people time to look the property over and give me a definite answer as to whether or not they take it." That the following option was proposed and executed by defendant, who knew that Easter was president of the Tri-State Coal and Coke Company and represented it in the transaction:

"Virginia Coke and Steam Coal Co. hereby grants to T. J. Easter, of Pittsburg, Pa., an option to purchase ten thousand acres of land in Harlan County, Ky., at the price of twenty dollars per acre, at any time within sixty days from this date, in consideration of and on condition that the said T. J. Easter shall forthwith send an en-

gineer to examine and report on said lands. Said examination to be completed and report made and said Virginia Coke and Steam Coal Company notified within thirty days from this date, and upon receipt of said report, said T. J. Easter shall elect as to whether or not he will accept this option and purchase said property, and if on receipt of said report, the said T. J. Easter notifies said Va. Coke and Steam Coal Company of his decision to purchase the said lands within said thirty days, then the said purchase is to be completed, the money paid and deed in fee to said land executed within sixty days from this date.

"Witness the following signature on this 24th day of June, 1902:

"VIRGINIA COKE AND STEAM COAL COMPANY,  
"By N. B. Dotson, President."

That the investigation made by experts was satisfactory, and the Pittsburg parties agreed to take 10,000 acres at the price named. That plaintiff had no authority to execute a contract for sale and telegraphed defendant to come. That defendant arrived in Pittsburg on September 3, 1902, and the parties all met in plaintiff's room in hotel. That the Pittsburg people announced themselves ready to take 10,000 acres of the land, but must have assurances in regard to building the railroad. Defendant then said he had simply a verbal arrangement with Spencer, but that he could get a letter from Spencer saying that he would build a road through there at once, and also said that engineers were there locating the road, and there would be no question about it. That the purchasers announced that a letter from Spencer would be satisfactory. That defendant asked plaintiff to go to New York and see Spencer and get the letter. That he did so and found that Spencer had gone to Europe. That plaintiff told the purchasers the situation and asked them to give him more time to get a letter from Spencer before abandoning the purchase. That, not having obtained the letter from Spencer in the meantime, the purchasers, in the latter part of October, announced to plaintiff that they could not wait longer, and were making arrangements for other coal lands. The evidence of Samuel Spencer, in connection with correspondence between him and defendant, tended to show that there had been no agreement with defendant to build his railway into the lands. That the same was contemplated, and preliminary surveys made, and so forth, but that all was based upon satisfactory assurances of a sufficient amount of business, which had not been obtained.

The testimony of Thomas J. Easter, called for plaintiff, tended to show that he was the president of the Tri-State Coal and Coke Company of Pittsburg, and represented it in negotiations with plaintiff for the purchase of coal lands in Harlan County, Kentucky. That he was not willing to invest in any property that could not be developed almost immediately. That plaintiff produced defendant's letter of May 8, 1902, stating that he had completed arrangements with Mr. Spencer to construct a road into said lands without any particular assurances as to improvements that would be necessary. That after procuring the option Wilson and Koonts, representing the Coal and Coke Company,



made a trip over the land. That in an interview with defendant in September, in Pittsburg, they informed him that they would take 10,000 acres at \$20 per acre if he could show some tangible arrangement between himself and the railway company to build the line. That defendant said he had Mr. Spencer's assurance to build the road whether operations were begun at once or not, but not in writing, and that Mr. Spencer's word was as good as a written contract. That defendant promised to effect a meeting between ourselves and the railway people, at which meeting he was sure a written agreement could be had. That nothing had since been heard as regards willingness to proceed with the railroad. That he did not buy the land for the reason that there was no arrangement for the construction of the railroad. That we failed to close at that meeting because defendant could not assure us that any railroad would be built, and therefore gave up the matter and purchased coal lands elsewhere. That they would not think of buying lands in that section without a railroad, and had refused to take up the matter seriously until shown the defendant's letter of May 8, 1902. That at an interview thereafter defendant stated there was no question about the railroad being built, that men were then working on the road while we were there, and had been taken off at the present time by an arrangement between him and Spencer to enable defendant to secure further options. That witness wrote a letter to Mr. Spencer on August 23, 1902, making inquiry about the railroad, which was replied to by W. W. Finley, second vice-president of the Southern Railway Company, on August 29, 1902, in which he said: "The construction of a line in the territory mentioned by you is now under investigation and consideration, but no final conclusions have been reached. Conclusions in the matter would be greatly facilitated if we could be advised from time to time of actual developments which parties in control of the lands contiguous to such line would obligate themselves to undertake. I shall be pleased to hear from you further on the subject." That the interview with Dotson, at Hotel Henry, was subsequent to the receipt of the letter from Finley. That witness had the letter, but did not show it to Dotson. That while they had their own ideas that no railroad would be built, they had been given to understand by Milliken that a bona fide agreement existed between Dotson and Spencer, and Dotson at the meeting gave them to understand that such agreement did exist, though not in writing. That they refused to take the matter up on Dotson's letter in October for the reason that they had purchased and begun operations in another field. That they abandoned the proposition to purchase some time after this meeting, and that the failure of Dotson to produce evidence of the agreement to construct the railway had everything to do with the decision not to purchase; that they decided at once after the meeting at Hotel Henry to abandon the idea of purchasing the land.

W. W. Finley testified to the letters produced, and to a conference in New York on September 23 with Dotson and one Perin, who had negotiations to purchase; but did not re-

member that Milliken was present. That the matter of railway construction was then "drifting along."

In connection with plaintiff's evidence was also read a letter to him, addressed to Pittsburg, on August 26, 1902, replying to his telegram relating to the offer of the parties, and containing the following: "Your telegram informing me that your parties have decided to take ten thousand acres positively, and possibly twenty thousand acres, is received. I presume you will have heard from Mr. Spencer before this time, and you will be down at once to close the matter up." This was posted at Wise, Virginia, where defendant resided. The letter of plaintiff, following the telegram aforesaid, was dated August 25, at Pittsburg, and contained this statement: "I have met Mr. Easter and they have decided to take the 10,000 acres of coal lands, on condition that Mr. Spencer will assure them as to the building of the railroad to Harlan O. H. They have written to Spencer and stated what they proposed doing, and asked as to the railroad. So, if his answer confirms what you have represented on this point, they will close the purchase for 10,000 acres." Then followed a complaint that Easter had letters from two other parties offering some of the lands at \$12.50 and \$15 per acre, and that some other parties had gotten the analysis that had been made for plaintiff, and warning him that no deal must be made with Easter and his people, the Tri-State Coal and Coke Co., at less than \$20, and only through plaintiff, unless you are willing to reduce the price on your own account without affecting me." This paragraph then followed: "But this would be utterly unnecessary. They have made up their minds to buy the 10,000 acres at \$20 if they can not get it for less, if Mr. Spencer satisfies them he will build the road. If he does not, they do not want the land at any price." There were other letters from plaintiff to defendant during September, 1902, tending to show that plaintiff was still trying to get some satisfactory statement from the officers of the Southern Railway Company (Mr. Spencer being still in Europe), concerning the building of the railway. Defendant testified that at the meeting with plaintiff in April, 1902, he authorized him to sell at \$17.50 per acre, agreeing to give him all that he could get in excess of that sum. He also read in evidence the correspondence between him and Spencer in 1902 relating to the railroad construction, that has been referred to in connection with Spencer's testimony. It is lengthy, and does not show that Spencer had ever entered into the alleged agreement to build the railroad, but was giving the matter favorable consideration. He also testified that plaintiff saw one of Spencer's letters of May 13, 1902, and that "Spencer did not say that the road would not be built; said he would consider it favorably."

Defendant also testified that he went to Pittsburg in response to plaintiff's telegram to come and close the deal. That he showed Easter a map of the location of the lands, and explained to them the terms on which the railroad would agree to build. That Easter suggested that defendant would better get a letter from Spencer—something in writing to bind him to construct the road; that they did not think they would go

into the matter upon a simple statement from Spencer that he would build the road; and that defendant would have to get a letter from Spencer. That defendant thought if Easter would see Spencer and let him know just what he was willing to do in the way of the development of the property, Spencer would not object to giving him a letter of that kind. That they promised to do that, and said they would arrange to see Spencer, to have a conference to see what arrangements could be made. That at the time defendant gave Milliken a letter of introduction to Spencer to go and see what arrangements could be made. This letter, dated September 5, 1902, stated that plaintiff calls in the interest of the Pittsburg coal people who want to join us in the development of some of the Harlan County coal lands, if they know that a railroad will be built into them in the near future. . . . He further testified that he had all of the Spencer correspondence with him and showed it to Milliken, and, he thinks, to Easter also; and after that Easter said he would not go into the deal unless they got a written contract with Spencer. In regard to the option, he testified that plaintiff brought it to him at his home, and had put in a clause making it conditional on the building of the road, and the defendant changed this.

One Charles P. Perin testified for defendant concerning purchase made by people represented by him of 30,000 acres of the Harlan County lands in September, 1902, and that in interviews concerning the railway plaintiff was present with him and Finley, the vice-president of the Southern Railway Company, and plaintiff then knew that no agreement had been made to build the railway. Several witnesses testified to declarations made to them by plaintiff when in Harlan County, and while he was inspecting the lands, that no railway had been promised to be built, etc.

Plaintiff, in rebuttal, denied the statements made by defendant, by Perin, and by the last-named witnesses.

1. The first assignment of error is founded on exceptions to the following instruction given to the jury at the request of the plaintiff:

"If the jury believe from the evidence that the defendant, on or about the 30th day of April, 1902, represented to the plaintiff that he, the defendant, was desirous of securing a purchaser for either the whole or any considerable quantity of the Harlan County coal lands at the price of \$20 per acre; that he had obtained from the Southern Railway Company its consent or agreement to construct a branch railroad into the said coal lands, and that he would pay to the plaintiff the sum of \$2.50 for each and every acre for which he should find a purchaser at and for the price of \$20 per acre, and that shortly thereafter, namely, on or about the 8th day of May, 1902, he further represented to the plaintiff that the Southern Railway Company was willing to build the said railroad into the said property without placing any requirements on the holders of the said lands to put in any certain size of plants or number of coke ovens, and that the plaintiff, relying upon the said representations of the defendant, expended time and effort in the attempt to find a purchaser, and did find a pur-

chaser able, ready, and willing to purchase 10,000 acres of the said lands at the said price, provided the defendant's said representations were correct, and that the said sale failed because of the inaccuracy of the defendant's representations that the said railway company had so consented or agreed to construct a branch railroad into the said lands, then the plaintiff is entitled to recover the said stipulated sum of \$2.50 per acre on the said 10,000 acres, or \$25,000 in all."

It is convenient, and will save some consumption of time, to consider the above assignment of error in connection with those founded on exceptions taken to the refusal of the second and eighth special instructions asked by the defendant, as follows:

2. "If the jury believe from the evidence that the plaintiff entered into the special agreement with the defendant as alleged in the declaration, by the terms of which his compensation or commission depended on the sale of the lands at a stated price, or on procuring a purchaser at the owner's price and terms, and that said plaintiff did not, in accordance with the terms of his said special agreement, effect an actual sale of the land by a binding and enforceable agreement obtained by him for the sale and conveyance of said land to a purchaser who was ready to close and able to perform such agreement of purchase, then the plaintiff is not entitled to recover.

"And if you believe from the evidence that the plaintiff has shown simply a provisional arrangement for the sale or purchase of said land by general negotiation or written option, which may have been accepted or rejected by the proposed purchaser at his pleasure or privilege, and which sale or purchase was never consummated, then the plaintiff can not recover."

8. "The burden of proof on the issue of the plaintiff having found a purchaser for the defendant's land, who was willing, able, capable, and ready to purchase 10,000 acres of such land, is upon the plaintiff; and if the jury believe from the evidence that the plaintiff has failed to prove that there was any such corporation as the Tri-State Coal and Ooke Company of Pennsylvania, or has failed to prove that there was such corporation as the Tri-State Coal and Ooke Company of Pennsylvania in existence at the date of the alleged sale of 10,000 acres of defendant's land to it; and has failed to prove that said alleged corporation as a corporation in fact, was ready, willing, and had the financial ability to purchase and pay cash for 10,000 acres of defendant's land at \$20 per acre, and has failed to prove that authority was given by the board of directors of said alleged corporation to T. J. Easter, its president, to make an arrangement to purchase, or to purchase said land for and in the name of said corporation, and has failed to prove that the acts of said Easter relating to negotiations to purchase said land or the alleged purchase thereof were never ratified by the board of directors or other proper authority of said corporation, or if the plaintiff has failed to prove either of the allegations of the declaration in this respect, then the plaintiff can not recover upon the allegations of the declaration."

(1) We are of the opinion that the foregoing

instruction, given at the request of the plaintiff, was a statement of the law applicable to the cause of action alleged and the evidence that was introduced.

It is well settled that when an agent, employed for the purpose, procures a purchaser willing and able to buy on the authorized terms, he becomes entitled to his compensation, although the sale may not be consummated, provided the consummation is prevented by the refusal, fault, or defective title of the principal. *Koch v. Emmerling*, 22 How., 69; *McGavock v. Woodley*, 20 How., 221; *Bryan v. Abert*, 3 App. D. C., 180, 181; 22 Wash. Law Rep., 297; *Oheat-ham v. Yarborough*, 90 Tenn., 77, 79; *Washburn v. Bradley*, 169 Mass., 86, 88; *Holden v. Stark*, 159 Mass., 503; *Knapp v. Wallace*, 41 N. Y., 477; *McFarland v. Lillard*, 2 Ind. App., 160, 166.

(2) The contract between the parties, concerning which in this particular there was no conflict in the evidence, required the plaintiff to find a purchaser ready, able, and willing to buy on defendant's terms and in accordance with his representations of material facts. He was not bound or even empowered by the terms of his agency to effect an actual sale by a binding and enforceable agreement. *Mannix v. Hildreth*, 2 App. D. C., 251, 275; 22 Wash. Law Rep., 98; *Fitzpatrick v. Gibson*, 176 Mass., 477, 478, 479; *Middleton v. Thompson*, 163 Pa. St., 112, 120; *McCreery v. Green*, 31 Mich., 172, 184, 185.

There was no error, therefore, in refusing the defendant's second instruction.

(3) Nor was it error to refuse the defendant's eighth special instruction aforesaid, for however sound the propositions of law therein enounced may be in the abstract, they have no application to the case made by the evidence.

Under all the conditions shown by the uncontradicted evidence, the proof of the corporate existence of the Tri-State Coal and Coke Company, and of its power to make the purchase, was sufficient for the purposes of the case. The defendant knew that the corporation was the proposed purchaser, and that Easter was its president, representing it in the transaction. Knowing this, he approved the action of the plaintiff and came to Pittsburg, upon his suggestion, to execute the contract and receive the purchase money. He was apparently satisfied in respect of the power of the corporation to make the purchase and of the authority of Easter to represent it, for he made no inquiry and asked for no evidence. There was not the slightest indication that he had any doubt upon either point. He accepted the offer, and the only thing that prevented the consummation of the sale, so far at least as he knew or had reason to believe, was his failure to make good his representation that he had a contract or agreement for the construction of the railway to Harlan County Court House. Moreover, notwithstanding the failure then to close the sale, he undertook to remove the purchaser's objection, the reasonableness and materiality of which he did not dispute, and asked the plaintiff to continue the negotiations to that end. It seems quite clear, from all of the evidence, that the objections were the result of afterthought.

The refused instruction also declared that in

order to recover it was incumbent upon the plaintiff to prove the financial ability of the purchaser to make good its offer. Whether in actions generally by agents to recover commissions for procuring purchasers, where there has been no consummation of the sale, the burden is upon the agent to show the ability of the proposed purchaser to pay the consideration, or upon the seller to show the want of that ability, is a question about which there is a conflict of authority. Some hold that solvency and ability are to be presumed; others maintain the opposite doctrine. In view of the particular facts of the case, we deem it unnecessary to express an opinion upon the broad question.

As we have seen, the defendant accepted the purchaser without condition or inquiry. He evidently had no more doubt of its ability to pay the consideration than he had of its authority to make such a purchase.

Whatever doubt there may be as regards the general question above stated, we are of the opinion that when the principal accepts the purchaser without question of his ability to perform, and the sale fails of consummation by his own fault or failure to make good his offer, the burden is upon him, in order to defeat the agent's right to compensation, to show the purchaser's want of ability. *Davis v. Morgan*, 96 Georgia, 518, 520. In that case, where the facts were quite like those in this, the court said:

"Upon this question the authorities are conflicting, but we think the true rule is this: that, as a general proposition, a broker who has been employed to sell is not entitled to recover his commission unless he shows that he procured a person willing, ready, and able to purchase upon the terms prescribed by his principal, but where it appears that the proposed purchaser was accepted by the principal, the burden is upon the latter to show that the purchaser was not able to comply with the terms of the contract (citing cases). In the present case, according to the defendant's own evidence, he accepted the proposed purchaser without objection, recognizing him as answering all the requirements; and there is no suggestion that he was not entirely solvent. Indeed, it appears that the failure to complete the sale was due wholly to the defendant's inability to make a good title to the land. This being so, we think the court erred in making the plaintiff's right to recover depend upon whether he had established the ability of the purchaser to pay for the land."

For other cases directly in point see *Lockwood v. Halsey*, 41 Kan., 166, 169; *Fairly v. Wappoo Mills*, 44 S. C., 227, 248.

Another contention urged by the appellant may be briefly considered, though it would seem sufficient to say that it was not made on the trial and has no foundation in any exception that appears in the record. It is this: that the proposition to sell 10,000 acres out of the larger quantity owned by the defendant contained a description too uncertain to be made the subject of an enforceable contract between seller and purchaser.

If a contract had been actually entered into between seller and purchaser, and this was a suit for its specific performance, or an action of damages for its breach, the question might

be a serious one, notwithstanding there are many decisions to the effect that such a contract carries with it the right of reasonable selection by the vendee and may therefore be rendered sufficiently certain. *Wofford v. McKenna*, 23 Tex., 38, 46; *Cheney v. Cook*, 7 Wis., 413, 422; *Walsh v. Ringer*, 2 Ohio, 327, 333; *Brown v. Menger*, 42 Minn., 482; *Armstrong v. Mudd*, 10 B. Mon., 144; *Lingerman v. Shirk*, 15 Ind. App., 432, 437; *Lander v. Peoria, Ag. and F. Assn.*, 71 Ill. App., 475, 481.

But we have no such case before us. The plaintiff had nothing to do with this question of uncertainty. He was employed to find a purchaser for the whole tract or any considerable portion of it. He procured an offer for 10,000 acres that was acceptable to his principal. The sale did not fail of consummation through any misunderstanding of the parties as to the land to be purchased, or any controversy respecting it, but solely by reason of the seller's failure to make good a representation of fact that was an essential condition of the sale. Had the seller and purchaser come together upon all other points, and yet failed to consummate the sale by reason of the purchaser's insistence upon an unfair and unreasonable right of selection, it may well be that the plaintiff could have lost his right to compensation. But nothing of the kind occurred, and the failure of consummation was the fault of the seller. Having, therefore, done all that he had contracted to do, he became entitled to the compensation promised therefor. In an analogous case, where a proposition for sale procured by an agent was accepted, and the purchaser made a part payment and tendered complete performance which the seller refused, it was held that the seller could not set up the insufficiency of the contract under the statute of frauds, to defeat the agent's claim for compensation. The court said: "If the plaintiff was authorized to make the sale, he is, under these circumstances, entitled to compensation, notwithstanding that the purchaser could not have been compelled to carry out his contract if he had chosen to set up the statute of frauds. It was the defendant's own fault that the sale was not consummated." *Holden v. Stark*, 159 Mass., 503. And in another case heretofore cited, a lease having failed of consummation because of the party's misrepresentation of a material fact, the same court said: "Whether the covenant was insufficient under the statute of frauds is immaterial if the proposed tenant's omission to perform was not for that reason, but because of the defendant's own fault." *Washburn v. Bradley*, 169 Mass., 86, 88; see, also, *McFarland v. Lillard*, 2 Ind. App., 160, 164; *Fitzpatrick v. Gilson*, 176 Mass., 477.

As has been said heretofore, the plaintiff's duty under the contract was to find a purchaser, and not to enter into an enforceable contract with him.

The last question to be determined (other assignments of error having been practically abandoned on the argument) arises on the refusal of the court to give the defendant's fifth special instruction to the jury.

The refused instruction reads as follows:

"5. If the jury believe from the evidence that any bona fide purchaser was actually found by

the plaintiff for 10,000 acres of said land as claimed in the declaration, upon the representations of said plaintiff to said purchaser as to the existence of a certain agreement between the defendant and the Southern Railway Company concerning the construction of a branch railroad into said lands and the purchaser did not rely on the said statements and representations of said plaintiff, but with the knowledge or cooperation of said plaintiff and at his suggestion sought to verify the truth of such statements and representations during the pendency of the negotiations for the purchase of said land before any transaction was closed for the purchase thereof, and that said purchaser had the opportunity of investigating, ascertaining, and verifying the truthfulness of such statements and representations, and took advantage of that opportunity by interviews, conferences, or written communications, either personally or by attorney, or by others, with the president and first vice-president of the Southern Railway Company for the purpose of verifying the said statements and representations so made by the plaintiff as to any agreement existing between the defendant and Southern Railway Company in regard to the construction of said branch railroad, and ascertained from the said officers of the said railway company, from time to time, during such negotiations and before September 15, 1902, the date upon which it is alleged in the declaration that said purchaser was found, that no agreement existed between the defendant and the said Southern Railway Company to build such branch railroad, but that the subject of building such branch railroad had only been discussed, and that the building thereof depended on the development and improvements to be placed on said land prior to the construction of any railroad, in the way of opening coal mines, establishing coke ovens, or furnishing the railroad with a sufficient amount of tonnage, and that said plaintiff and alleged purchaser had full knowledge and information from the proper officers of the Southern Railway Company of all the facts relating to the conditions upon which the said branch railroad would be constructed and of the non-existence of any agreement between the defendant and Southern Railway as alleged, then the defendant is not responsible for the non-performance of the alleged sale or purchase of the land between the plaintiff and the alleged purchaser, and you should find for the defendant."

This instruction was refused, as we draw from the remarks of the court recited in the bill of exceptions, not for the reason that it did not embody a sound rule of law in the abstract, but because it had no foundation in the evidence. As said by the learned trial justice, the evidence had no tendency to show that the plaintiff did not fully rely upon the defendant's representation of the promise to construct the railway to the land. Assuming it to be true, as testified to by the defendant, that the plaintiff, while he was engaged in efforts to procure a purchaser, saw the letters that had been written to the former by the president of the Southern Railway Company, Mr. Spencer, still that correspondence did not inform him of the falsity of the representation upon which he acted. The letters do not contain a positive

agreement to build the railway, but they do show that Mr. Spencer was deeply interested in the possible advantage to result from the development of defendant's lands, and was willing to build upon some certainty of immediate development of the coal mines.

Not only this, but during the time the plaintiff was engaged, he was informed by the defendant that the railway engineers were surveying the line, and had secured almost the entire right of way. The only uncertainty regarding the construction of the railway that could reasonably be created in the mind of the plaintiff was in respect of the amount of development that the railway people would require as a condition. This is shown by the telegram of May 7, saying he would write to Spencer, and that the parties he was dealing with wanted to know positively about the railroad. It appears from the testimony, however, that he did not write to Spencer, and the latter testified that he received no such letter from the plaintiff. In reply to the telegram of May 3, the defendant wrote plaintiff on May 8, also quoted in the preliminary statement, in which he said that he had seen Spencer and that the latter was ready to build without any requirement as to development. On May 29 he wrote that the railway company had secured the right of way with a few exceptions, and that he had requested Mr. Spencer to call his men off until he could secure more land. On June 9 plaintiff mentioned the anxiety of Easter to know how soon the road could be built; that he had asked if he could have a talk with Mr. Spencer, and plaintiff had said yes. June 12 defendant answered this letter, saying that it would not be necessary for him to go with Easter to see Spencer, and that the latter would not hesitate to tell Easter that he would build at once. The tenor of defendant's entire correspondence up to the time that he received notice of the willingness of Easter to take 10,000 acres was to the effect that the road would be built at once. On August 25 plaintiff had brought the parties to agree to purchase, and telegraphed defendant to that effect. Plaintiff's letter of August 25 referred to his telegram and letter confirming the offer to purchase, and announced that the matter could be closed that week if Spencer should reply promptly to a letter written him by Judge Potter, who was one of the members of the Tri-State Coal and Coke Company. Plaintiff assented to the purchasers making inquiries of Spencer to satisfy themselves, and defendant, knowing it, concurred. Any other course on the part of either would have aroused the suspicion of purchasers. That they may have instituted inquiries could not affect plaintiff's right. It is true that Easter wrote to Mr. Spencer on August 23, asking him to give a definite idea as to when he could expect the railroad, as it would enable him to decide on taking the land. Mr. Spencer, it seems, went to Europe about that time, and the letter was answered by Vice-President Finley on the 29th, who said: "The construction of a line in the territory mentioned by you is under investigation and consideration, but no final conclusions have been reached. Conclusions in the matter would be greatly facilitated if we could be advised from

time to time of actual developments which parties in control of lands contiguous to such a line would obligate themselves to undertake."

This letter was not from Mr. Spencer, to whom all the references had been made, and while it showed that no positive agreement was acknowledged, indicated nevertheless a disposition to carry on the enterprise. Before this was received, however, the purchasers made their proposal in the faith of the representations made, and there is nothing to indicate that they would not have performed if defendant had been able to satisfy them that his representation was true, or would be made good by Mr. Spencer. Besides, the plaintiff had no knowledge of the letter. His work was done when he procured the offer, which there is nothing to show was in bad faith. What was thereafter done by plaintiff or any of the parties to secure the promise of railway construction in a fruitless attempt to consummate the sale could have no bearing on the rights of plaintiff which had accrued on or about August 25.

No error having been committed on the trial, the judgment will be affirmed with costs.

Affirmed.

CONRAD BRIEL, APPELLANT,

v.

ALICE S. JORDAN.

EJECTMENT; ADVERSE POSSESSION; EVIDENCE.

1. The evidence in an action of ejectment held to show a clear case of actual, exclusive, continuous, open, and adverse possession of the premises by the defendant and those under whom she claimed for more than twenty years, vesting in her a good and sufficient title; and the direction by the trial court of a verdict in her favor held proper.
2. The evidence of the record of a proceeding brought by plaintiff before a justice of the peace against the tenant of defendant's ancestor, who had never been the tenant of plaintiff, and of an attornment by said tenant to plaintiff, held properly excluded.

No. 1626. Decided April 4, 1906.

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 45,435, entered upon a verdict directed by the court in an action of ejectment. Affirmed.

*Mr. E. Hilton Jackson and Mr. Richard A. Ford* for the appellant.

*Mr. Leo Simmons* for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

Conrad Briel brought this action in ejectment against Alice S. Jordan to recover the possession of lots 10 and 11 in block 144, in the city of Washington. He died pending the appeal, and his heirs at law, William H. and Engelhard Briel, have been substituted as parties.

The plaintiff's evidence tended to show a prima facie case of title.

Defendant, for the purpose of showing color of title, offered in evidence a deed from the corporation of Washington, recorded July 28, 1862, conveying the said lots to M. A. W. C. Van Ness, and then proved that she was the heir at law of said grantee, who died in 1864. She then offered evidence tending to show that there was an "old frame shanty" upon the

premises, which were partly enclosed by a fence. That said shanty was there as early as 1864 and occupied by tenants of said Van Ness at the time of her death in that year. That the mother of defendant claimed the property thereafter and collected rents. That one Nelson Roan occupied the shanty as early, at least, as April 2, 1868, and died therein some years after. That a book was found among the effects of said Nelson Roan after his death, which was kept in the possession of his daughter, Emma Roan, and produced by her. This book showed entries of receipts for rent paid by him to defendant's mother, Eliza S. Cragin, who was the sole heir at law of M. A. W. O. Van Ness. The first of these was dated April 2, 1868, and was for one month's rent, \$2. That defendant had collected the rent from said Roan through an agent for eight or nine years, and afterwards in person. That a lease offered in evidence, dated March 29, 1887, was made by the defendant to said Nelson Roan. That Emma Roan, the daughter of Nelson Roan, and a member of his family, had continued to occupy the property since his death, and was then in possession, paying rent, when able, to the defendant. That during part of the aforesaid period some of the taxes upon the property, but not all of them, had been paid by defendant and those under whom she claims.

No evidence was offered contradicting any of this evidence, or to the effect that plaintiff, or those under whom he claimed, had ever paid any taxes upon the property.

Plaintiff, in order to break the continuity of defendant's possession, offered to show that on August 4, 1888, he had begun a proceeding in a justice's court to recover possession of the premises, against Nelson Roan; that personal service was had on the defendant on the same day, returnable August 13, 1888; that on August 14, 1888, plaintiff appeared and demanded judgment; that defendant made default, whereupon judgment was entered against him, awarding possession to plaintiff; that on August 25, 1888, a writ of restitution was issued and returned executed; and that on the same day plaintiff leased the premises to said Nelson Roan. There was no pretense that defendant was a party to this proceeding or had any knowledge of the same or of the said lease agreement. Nor was there any offer to show that Nelson Roan had ever paid rent to plaintiff. The court excluded the evidence on the objection of the defendant, and the plaintiff excepted.

There being no further evidence, the court directed the jury to return a verdict for the defendant.

The court was clearly right in excluding the plaintiff's evidence. Whether the justice's court had jurisdiction in the matter at all, we need not pause to inquire. The party defendant, Nelson Roan, was not ousted. He had never been the tenant of the plaintiff, but had been, and continued to be, the tenant of the defendant. At most, the proceeding was nothing more than an unwarranted scheme to obtain an attornment to the plaintiff of the defendant's tenant without her knowledge—an attornment that was expressly declared to be void by the statute then in force. R. S., D. C., sec. 683.

The evidence on behalf of the defendant made out a clear case of actual, exclusive, continuous, open, and adverse possession of the premises, for more than twenty years, by her and those under whom she claimed, and had the effect to create in her a good and sufficient title. *Holtzman v. Douglas*, 168 U. S., 278, 284; *Reid v. Anderson*, 13 App. D. C., 30, 36: 26 Wash. Law Rep., 387.

This evidence having been undisputed, even in part, there was no error in directing the jury to find for the defendant.

The judgment must be affirmed with costs.  
Affirmed.

LOUIS H. JOHNSON, PLAINTIFF IN  
ERROR,

v.

THE DISTRICT OF COLUMBIA.

CONTAGIOUS DISEASE; FAILURE OF PHYSICIAN TO  
REPORT.

1. The act of Congress of December 20, 1890, requiring physicians to report cases of scarlet fever or diphtheria in their charge, and imposing a penalty for non-compliance, applies only to practicing physicians who, being called upon, undertake the treatment of persons suffering from diphtheria or scarlet fever, and does not include those engaged in a special service who decline to treat such a case because not in the line of that service.
2. A physician in charge of a dispensary conducted as a charitable institution who, on ascertaining that a person requesting treatment was suffering from diphtheria, declined, in compliance with the rules of the institution, either to treat or to take charge of such person, is not within the provision of the said statute.

No. 1687. Decided April 4, 1906.

IN ERROR to the Police Court of the District of Columbia. Reversed.

*Mr. John C. Gittings* and *Mr. J. M. Chamberlain* for the appellants.

*Mr. E. H. Thomas* for the appellee.

*Mr. Chief Justice SHEPARD* delivered the opinion of the Court:

An information in the Police Court charges that Louis H. Johnson, of the District of Columbia, "being then and there a registered physician in charge of a certain person infected with a contagious disease, to wit, diphtheria, did fail and neglect to report the same to the health officer of the District of Columbia within twenty-four hours after becoming aware of the existence of said disease, on a form furnished by the said health officer, to wit, a case of diphtheria in the person of one Mildred Carey, contrary to and in violation of an act of Congress," etc.

The proof showed that the defendant was a registered practicing physician, and on October 19, 1905, the date charged in the information, was the physician in attendance at the Woman's Dispensary. That Mildred Carey, an infant, attended by her mother, called at the dispensary; that, having heard the history of the case and made a casual examination, and being of the opinion that she had diphtheria, defendant refused to treat the patient, and suggested to the mother to take the child home, isolate her from the rest of the family, and call in a physician. It was further shown that the

child had diphtheria at the time, and that defendant made no report of the case to the health officer. On behalf of the defendant it was shown that the dispensary is a charitable institution supported by an appropriation by the Board of Charities, and donations from such patients as are able to pay 10 cents. That defendant received no compensation for his services and rendered the same as an act of charity. That the dispensary is open from 1 to 3 o'clock each day, except Sunday, for the treatment of the diseases of women and children. That it was a rule of the institution that no contagious diseases could be treated by its physicians at the same. That there were no facilities for such purposes. That it had been the universal custom to refuse to treat a contagious disease when discovered. That defendant was told that the child, when presented to him, had a sore throat. That after hearing the statement of conditions and examining the patient's throat, he diagnosed the case as one of diphtheria, declined to prescribe, and refused to take charge of the case. That in all cases of scarlet fever and diphtheria which had come under his charge as a physician he had uniformly complied with the act of Congress, upon blanks furnished by the Health Department. That it had never been the practice of the dispensary physicians to report cases coming under their observation while in attendance there, and no blanks had been furnished to the institution for that purpose.

Upon this evidence the defendant moved the court to enter a judgment of not guilty. This was denied, and the defendant was adjudged guilty and fined \$25. Upon application a writ of error was granted to review the judgment.

The information was presented under section 1 of the act of Congress approved December 20, 1890, which reads as follows: "That from and after the passage of this act it shall be the duty of every registered practicing physician, or other person prescribing for the sick in the District of Columbia, to make report to the Health Officer, on forms to be furnished by that officer, immediately after such practitioner becomes aware of the existence of any case of scarlet fever or diphtheria in his charge; and in case such person shall fail to report within twenty-four hours he shall be subject to a penalty of not less than \$5 nor more than \$50, and in case of a second offense the penalty shall not be less than \$10 nor more than \$100. In case no physician shall be in charge of such patient, the householder where such case occurred, or person in charge thereof, the parent, guardian, nurse, or other person in attendance upon the sick person, knowing the character of the disease, shall make the report above mentioned, and in case of failure to report shall suffer the same penalties as provided for physicians in this act."

We are of the opinion that this act was intended to apply to practicing physicians, who, being called upon, undertake the treatment of persons suffering from diphtheria or scarlet fever, and does not include those engaged in a special service who decline to treat such a case because not in the line of that service.

Acting as the physician of the dispensary, it was, necessarily, the duty of the plaintiff in

error to examine the person applying for treatment, in order to ascertain if she came within the established scope of its charity, and if so, then to prescribe a remedy. But such examination alone did not put the patient "in his charge." He was prohibited by the rules of the dispensary from taking charge, as its representative, of one found to have diphtheria; and in obedience to his duty he declined, upon ascertainment of the fact, either to treat or take charge of the sufferer.

Under the ordinary meaning of the language of the statute, the patient can not be declared to have been "in his charge," in violation of his obligation to the dispensary, and against his own will.

Doubtless it would be a reasonable and beneficial exercise of the police power, in relation to the public health and safety, to require all physicians under whose observation a case of diphtheria or scarlet fever may come, whether they take charge of the same or not, to make immediate report thereof to the health officer in order that the necessary precautions may be taken to prevent contagion. But this statute has not so provided, and however beneficial such result might be, it can not be given a strained and artificial construction to accomplish the desired end.

This view of the meaning of the statute under consideration is strongly supported by the language of a later statute relating to contagious diseases. The later act to prevent the spread of contagious diseases was approved March 3, 1897 (29 Stat., 635). It specifies by name certain diseases ordinarily considered contagious, but omits scarlet fever and diphtheria, and in its first section declares that "persons in charge of a case of contagious disease" (as above named) "shall be held to mean, first, the head of the family in which such case belongs; second, in his absence or disability or in case he be the person sick, the nearest relative or relations of such case present on the premises where such case is, and being in attendance on him; third, in the absence of such relations, every one in attendance on such person; fourth, in the absence of any one so in attendance, every one in charge of the premises where such person is."

Section 2 then provides "that every physician attending on, or called in to visit, or examining any case of contagious disease in the District of Columbia, shall immediately cause said case to be properly isolated, and at once send to the health officer of said District a certificate signed by him, which said certificate shall state the name of the disease, and the name, age, sex, and color of the person suffering therefrom, and shall set forth, by street and number, or otherwise sufficiently designate the house, room, or other place in which said person may be located, together with such other reasonable information relating thereto as may be required by said health officer; provided, that attending, visiting, or examining any person suffering from a contagious disease shall be prima facie evidence that any physician so doing was aware that such person was suffering from such disease."

The difference between the special provisions of these statutes is substantial and material. By the former the requirement to make re-



port is limited to the physician who has the case in his charge. The latter imposes that duty, not only upon the attending physician, who is the one having the patient in charge, but also upon any physician called in to visit, or who may examine a case of contagious disease.

The Police Court erred in denying the motion to acquit the defendant, and the judgment will be reversed and the cause remanded, with direction to grant the motion.

Reversed.

#### Contracts for Display Advertisements.

Where a landowner agrees for a valuable consideration to allow the display of a sign upon his premises, an important question arises as to the nature of the right thus created. Three lines of reasoning have been suggested by the cases which have arisen: That the agreement constitutes a lease (*Snyder v. Hersberg*, 11 Phila., Pa., 200); that it amounts only to a license (*Wilson v. Travenor*, 1901, 1 Ch., 578; and see *Reynolds v. Van Beuren*, 155 N. Y., 120); and that it gives rise to an easement. The last view is expressed in a recent decision of the Kentucky Court of Appeals (*Levy v. Louisville Gunning System*, 89 S. W. Rep., 528).

A permissive occupation conferring a legal possession is essential to the relation of landlord and tenant. See *Jones, Landlord and Tenant*, sec. 40. A licensee, however, need not be, and ordinarily is not, in possession, but has the right to do an act or a series of acts on the land of his licensor. See *Cook v. Stearns*, 11 Mass., 533; *Jones, Landlord and Tenant*, sec. 36. An advertiser does not acquire possession of the wall whereon his advertisement is posted, but simply gains a right to do certain acts on the land of another. Where this right is created by oral agreement, his position is that of a licensee. His right, therefore, is subject to be revoked at the pleasure of his licensor, though, where the license is founded on a valuable consideration and is given for a definite period, a premature revocation would give rise to a right of action for breach of contract. *Kerrison v. Smith*, 1897, 2 Q. B., 445. As a license is terminated by any act of the licensor showing an intention to revoke, a subsequent conveyance of any interest in the property inconsistent with the continued enjoyment of the licensee's right would amount to a revocation. *Eckerson v. Crippen*, 110 N. Y., 585. Where, however, the agreement is under seal, the only square decision on the subject is to the effect that a right in gross is created in the nature of an easement (*Willoughby v. Lawrence*, 116 Ill., 11), which is irrevocable by the grantor, is good against his subsequent grantee or lessee, and will be protected from interruption by a court of equity (*Gunning Co. v. Cusack*, 50 Ill. Ap., 290). Where the agreement is in writing not under seal, the advertiser acquires only the rights of a licensee, according to the present weight of authority. It is submitted, however, that the agreement is valid as a contract to grant an easement and should be specifically enforceable in equity (see *Gunning Co. v. Cusack*, supra; *Witherell v. Brobst*, 23 Ia., 586), at least in jurisdictions which recognize easements in gross.

In any event, whether easement or license, the grant of such a right by the lessee of premises would not be a breach of his covenant not to sublet. *Lowell v. Strahan*, 145 Mass., 1. But where a lessee with such a covenant leased the roof of a building, together with the right to maintain a sign thereon, the parties manifestly created the relation of sublessee in violation of the covenant. See *Gude Co. v. Farley*, 28 N. Y. Misc., 184. So, where an advertiser who has acquired for a term of years such an easement as in the present case, fails to paint out or remove his sign at the end of his term, he is not liable for rent as a tenant holding over. *Goldman v. N. Y. Advertising Co.*, 29 N. Y. Misc., 133. And since there can be no recovery quasi contractually for the use and occupation of land unless the relation of landlord and tenant exists, it would seem that the landowner could not recover in such a situation. See *Keener*, *Quasi Contracts*, 191, 192.—*Harvard Law Review*, May, 1906.

#### Physicians and Surgeons—Action for Services—Answer—Sufficiency.

In *Coyne v. Baker*, decided by the Court of Appeals, Second District, California, in January, 1906 (84 Pac., 269), it was held that in an action for the services of a physician, on a contract whereby he was to make an examination of defendant and give his opinion as a medical expert in evidence, an answer that plaintiff in testifying, by reason of ignorance and negligence, damaged defendant by testifying that defendant was insane, which was untrue, was sufficient, and it was error to strike it out.

A bank sending to another bank, which is its regular correspondent, for collection, a draft indorsed for collection and credit is held, in *Garrison v. Union Trust Co.* (Mich.), 70 L. R. A., 615, to have no right to assert its title against the lien upon the proceeds to which a third bank, to which the draft is forwarded for collection, is entitled in the ordinary course of business to balance its account against the intermediate bank.

The right of the drawer to claim the proceeds of a bank draft sent in payment of goods sold, deposited in bank, collected, and placed to the credit of the payee, because, to get possession of the property which he bought, he was compelled to pay a draft on himself which the seller of the goods had drawn, attached to the bill of lading, and had discounted, is denied in *T. S. Reed Grocery Co. v. Canton Nat. Bank* (Md.), 70 L. R. A., 959, although the seller fraudulently appropriated his draft while leaving the one against him outstanding in the hands of the concern which discounted it with lien on the property as security. The right to follow proceeds of draft into payee's bank account because of fraud or failure of consideration is the subject of a note to this case.

A statute requiring vaccination as a prerequisite to attendance at public schools is held, in *Viemeister v. White* (N. Y.), 70 L. R. A., 796, to be a reasonable and proper exercise of the police power.

Requiring the substitution of water-closets for school sinks in tenement houses is held, in *Tenement House Department v. Moesch* (N. Y.), 70 L. R. A., 704, to be a proper exercise of the police power.

An agreement by one permitted to place a structure on a railroad right of way, as part of the consideration therefor, to indemnify the railroad company against liability for injury to the property while upon or about the premises, due to the carelessness of the railroad company or its servants, is held, in *Osgood v. Central Vermont R. Co. (Vt.)*, 70 L. R. A., 930, not to be against public policy.

A modern apartment house is held, in *Kitching v. Brown (N. Y.)*, 70 L. R. A., 742, not to be within a covenant against the erection upon certain premises of a tenement house, which was made at a time when that term referred to the habitations of the very poor, and was associated in the contract with other things that were obviously noxious, noisome, or deleterious.

The right of a court, in an action for divorce, to punish a contempt in refusing to pay alimony by striking the defendant's answer from the record, or refusing to permit him to plead further, in a case where he has voluntarily absented himself from the territory for the purpose of avoiding contempt proceedings for failure to pay such alimony, is sustained in *Bennett v. Bennett (Okla.)*, 70 L. R. A., 864.

The refusal of the agent at the intermediate terminal to indorse a return-trip ticket, which indorsement, according to the terms of the ticket, is necessary to validate it, is held, in *Texas & P. R. Co. v. Payne (Tex.)*, 70 L. R. A., 946, not to be a final breach of its contract by the carrier, so as to preclude recovery by the passenger of any damages that may subsequently accrue; and, where the passenger is ejected from the train when attempting to use the ticket, under circumstances of humiliation, it is held that he may recover damages therefor.

#### RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

#### Legal Notices.

##### FIRST INSERTION.

Chas. F. Wilson, Attorney  
In the Supreme Court of the District of Columbia,  
Holding Probate Court.  
In re Estate of Edward Farquhar, Deceased.  
No. 13,270.

##### ORDER.

The executors having reported that they have sold property described as sublot 189 in square 736, known as premises 523 2d street Southeast, city of Washington, District of Columbia, to William W. Slye, for the sum of thirty-one hundred dollars cash, it is by the court, this 28th day of May, A. D. 1906, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 29th day of June, A. D. 1906. Provided a copy of this order be published in the Washington Law Reporter once a week for each [Seal] three successive weeks before said last named day. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. 22-31

#### Legal Notices.

Hamilton, Colbert & Hamilton, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Francis H. Hill, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of May, 1906. GEORGE E. HAMILTON, Century Building. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,486. Administration. [Seal.] 22-31

Edwin S. Bailey, Solicitor

In the Supreme Court of the District of Columbia.  
Edwin W. Spalding, Complainant, v. The Unknown  
Heirs of Clark Hamil, Deceased, Defendants.  
Equity No. 23,047. Doc. 58.

The object of this suit is to declare title in Edwin W. Spalding to duplicate bounty warrant No. 56,276, the original of which was issued to Clark Hamil on the 14th day of February, 1857, under act of Congress of March 3, 1857. On motion of complainant, it is, this 29th day of May, A. D. 1906, ordered that the defendants, the unknown heirs, next of kin, legatees, or devisees of Clark Hamil, deceased, cause their appearance to be entered herein on or before the first rule day occurring three months after the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for the period of three months in The Washington Law Reporter and

The Washington Post. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. June 1, 8; July 6, 13; Aug 3, 10

F. H. Stephens, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Mary E. Clawson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 25th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of May, 1906. JAMES E. HEFFNER, 1934 8th st. N. W. Attest: W. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,662. Administration. [Seal.] 22-31

W. Mosby Williams, Solicitor

In the Supreme Court of the District of Columbia.  
Susan E. Hall et al. v. J. Dominic Bowling et al.  
Equity No. 25,951. Doc. 57.

Charles J. Martell and W. Mosby Williams, trustees, having reported sale at public auction of the real estate decreed to be sold in this cause, to wit: lot 107 in Gilbert's subdivision, in square 675, Washington City, District of Columbia, to Sarah G. Mullen, for the sum of \$3,885, it is, therefore, this 31st day of May, 1906, ordered that said sale will be ratified and confirmed on the 29th day of June, 1906, unless cause to the contrary be shown before said last-mentioned day. Provided that a copy of this order be published in each of three successive issues of The Washington Law Reporter prior to the last-mentioned date. By the court: HARRY

[Seal] M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 22-31

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary D. Spackman, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 29th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of May, 1906. HENRY E. SPACKMAN, 1834 16th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,387. Administration. [Seal.] 22-31

**Legal Notices.**

**Hugh T. Taggart, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Hugh Tauby**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of May, 1906. **JACOB H. MERTZ**, 11 4th st. N. E. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,444. Administration. [Seal.] 22-St

**SECOND INSERTION.**

**R. A. Curtin, Solicitor**

**In the Supreme Court of the District of Columbia.**  
**Mary Molloy et al. v. Ellen O'Brien et al.**  
 No. 26,188. Equity Docket No. 58.

The object of this suit is to partition by sale the estate of **William Santry**, also known as **William Sauntry**, deceased, and to distribute the proceeds to heirs at law and parties entitled thereto. On motion of the complainants, it is, this 22d day of May, A. D. 1906, ordered that the defendants, **Margaret Santry**, **John Carpenter**, **Joseph Carpenter**, **May Carpenter**, and **Lillie Carpenter**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published

in the Washington Law Reporter once a week [Seal] for three successive weeks. By the Court: **HARRY M. CLABAUGH**, Chief Justice. True copy. Test: **John R. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. 21-St

**Wolf & Rosenberg, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**

**Robert F. Poore et al., Complainants, v. Joseph H. Poore et al., Defendants.** Equity, No. 25,590.  
**ORDER CONFIRMING SALE NISI.**

**Maurice D. Rosenberg**, trustee, having reported to the court that he has sold the real estate situate in the county of Washington, District of Columbia, namely: all the parts of the tract of land known as "Lucky Discovery" or "Rock of Dumbarton," of which **Francis Poore**, deceased, died seized. Said land has a front on Wisconsin avenue of fifty-five (55) feet by an average depth of two hundred and ten (210) feet, and is improved by two frame dwellings, under rental, to **Byron Richards**, for the sum of thirty-three hundred dollars, it is, by the court, this 22d day of May, A. D. 1906, ordered that the said sale be ratified and confirmed unless cause to the contrary be shown on or before the 25th day of June, 1906. Provided this order be published once a week for three successive weeks in The Washington

[Seal] Law Reporter prior to said date. By the Court: **HARRY M. CLABAUGH**, Chief Justice. A true copy. Test: **J. R. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. 21-St

[Filed May 22, 1906. **J. R. Young**, Clerk.]  
**C. W. Stetson and P. H. Marshall, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Charles W. Stetson, Trustee, v. Mary A. Robinson et al.**  
 Equity, No. 25,971. Doc. 57.  
**ORDER NISI.**

This cause came on to be heard at this term upon the report of **Charles W. Stetson** and **Percival H. Marshall**, the trustees herein appointed by decree to sell part of original lot 2, square 579, beginning on D street 33 feet west of the southeast corner of said lot, running thence west on said street 15 feet 6 inches; thence north 32 feet; thence east 2 feet 6 inches; thence north 102 feet 6 inches; thence east 13 feet; thence south 131 feet, except the rear 7 feet 6 inches of said lot heretofore condemned by marshal's jury for an alley; that they have sold said part of said lot to **Charles H. Parker** for \$2,350. It is, this 22d day of May, 1906, ordered, adjudged, and decreed that the said sale be ratified and confirmed unless cause to the contrary be shown on or before the 23d day of June, 1906. Provided a copy of this order be published once a week for three successive weeks before the last-named date in The Washington Law Reporter. **WENDELL P. STAFFORD**, Justice.

A true copy. Test: **J. R. Young**, Clerk, by **J. W. Latimer**, Asst. Clerk. 21-St

**Legal Notices.**

**Chas. W. Darr and Richard A. Curtin, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the State of New Jersey, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Mary L. Porter**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the 21st day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of May, 1906. **WALTER E. ENNIS**, Lambertville, N. J. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,513. Administration. [Seal.] 21-St

**Albert Sillers, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **John F. Kelly**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 14th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of May, 1906. **MARY E. BRENNAN**, 825 8th st. N. E. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,644. Administration. [Seal.] 21-St

**S. R. Bond, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Lowder Dashiell**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of May, 1906. **J. MURDOCH CLARK**, 2 M st. S. W. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,682. Administration. [Seal.] 21-St

**Hayden Johnson, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Elizabeth J. Reynolds, Deceased.**  
 No. 13,498. Administration Docket.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by **Alexander Reynolds**, and **Joseph Walter Reynolds**, it is ordered this 24th day of May, A. D. 1906, that **Barbara Reynolds**, **Fredrick Reynolds**, **Josephine Reynolds**, and all others concerned, appear in said court on Monday, the 25th day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than [Seal] thirty days before said return day. **WENDELL P. STAFFORD**, Justice. Attest: **WM. C. Taylor**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 21-St

**Blair & Thom, Attorneys**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Frances Oliver Johnson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of May, 1906. **LOREN B. T. JOHNSON**, 1211 Connecticut ave. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,684. Administration. [Seal.] 21-St

**Legal Notices.**

**Thompson & Laskey, Solicitors**  
In the Supreme Court of the District of Columbia.  
Mary J. Cooper, Complainant, v. Thomas E. Waggoner et al., Defendants. Equity, No. 25,978.

Upon consideration of the report of Ralph Given, trustee, of the sale of the property known as No. 701 Twenty-second street Northwest, at and for the sum of three thousand and eight hundred dollars, cash, this day filed in this cause, it is, this 21st day of May, A. D. 1906, ordered that the said sale, as made and reported by the said trustee, be and the same is hereby ratified and confirmed, unless cause to the contrary thereof be shown on or before the 25th day of June, A. D. 1906; provided a copy of this order be published in the Evening Star and The Washington Law Reporter once a week for three successive weeks prior to the date last aforesaid. [Seal] WENDELL P. STAFFORD, Justice.

True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 21-St

**E. S. McCalmont, Solicitor**  
In the Supreme Court of the District of Columbia.  
Charlotte Campbell et al. v. George H. Calvert et al. Equity No. 23,932.

The trustees herein having reported an offer from Henry A. Vieth and Glenn E. Husted to purchase the tract of land in the District of Columbia, called "Greenvale," lying between Woodridge and Langdon, containing 37.65 acres, more or less, described in the bill of complaint in this cause by metes and bounds, for the sum of \$28,400, net, payable \$7,000 in cash, \$5,000 in one year, \$5,000 in two years, and the balance in three years, from consummation of sale, on or before July 15, 1906, the deferred payments to be secured by deed of trust on the property sold, with interest payable semi-annually at 5% per annum, said offer being conditioned on the right of the purchasers to anticipate payments on the deferred payments, and to have released from the lien of the trust portions of said property in fixed proportion to the amount of the anticipated payments, which condition, with others, are fully set forth in the offer of said purchasers, a copy of which is filed in the cause with the report of the trustees; it is this 24th day of May, 1906, ordered, that said offer be accepted, and sale made thereunder be ratified and confirmed, unless cause to the contrary be shown on or before the 25th day of June, 1906, provided a copy of this order be published in the Washington Law Reporter once each of three successive weeks before said last named day. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 21-St

**Benj. S. Minor, Executor**  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.  
Estate of Margaret E. Stone, Deceased.  
No. 12,568.

Upon consideration of the petition and report of Benjamin S. Minor, executor, filed herein on the 24th day of May, A. D. 1906, that he has sold to George H. Higbee lot 28, in square 263, being the northeast corner of 14th and F streets, in the city of Washington, District of Columbia, the same having a frontage of about 28.89 feet on F street by a depth of about 85.89 feet on 14th street, for the sum of one hundred and ninety thousand dollars (\$190,000), payable in the manner set forth in said offer, it is, this 24th day of May, A. D. 1906, by the court, adjudged, ordered, and decreed that the said sale to the said George H. Higbee be, and the same is hereby, ratified and confirmed, unless cause to the contrary be shown on or before the 25th day of June, 1906. Provided a copy of this decree be published in The Washington Law Reporter and in The Evening Star once a week for three successive weeks before said date. WENDELL P. STAFFORD, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 21-St

**A. A. Alexander, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Calvin Darrick, late of the State of New York, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 21st day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of May, 1906. DANIEL W. O'DONOGHUE, 413 5th St. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,650. Administration. [Seal.] 21-St

**Legal Notices.**

**Barnard & Johnson, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John B. Simmons, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 18th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of May, 1906. CLARA B. SIMMONS, 718 19th St. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,345. Administration. [Seal.] 21-St

**THIRD INSERTION.**

**Wm. E. Ambrose, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Rosena Auth, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of May, 1906. ANNIE M. LAUER, 1201 B St. N. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,601. Administration. [Seal.] 20-St

**Blair Lee, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Benjamin H. Buckingham, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of May, 1906. MARGARET C. BUCKINGHAM, 1525 H St. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,668. Administration. [Seal.] 20-St

**Blair and Thom, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Irene H. Stansbury, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of May, 1906. WILLIAM CORCORAN HILL, No. 1724 H street N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,667. Administration. [Seal.] 20-St

**Ormsby McCammon, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Pennsylvania, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Robert Armstrong late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of May, 1906. E. A. WEIR, Perth, Ontario Canada. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,603. Administration. [Seal.] 20-St

**Legal Notices.****J. Paul Earnest, Solicitor**

**In the Supreme Court of the District of Columbia.**  
**Champe B. Thornton et al. v. Jennie T. Powers et al.**  
 Equity, No. 21,956.

Upon consideration of the report of John P. Earnest, trustee, filed herein, it is, this 17th day of May, A. D. 1906, ordered that said trustee be authorized to accept the offer of Heber L. Thornton to purchase at private sale for twenty-five hundred dollars (\$2,500), lots 10, 11, and 12, in block 12, and lots 1 and 2, in block 8, of the lots decreed to be sold in the above-entitled cause, and further that said sale of said lots be ratified and confirmed, unless cause to the contrary be shown on or before the 18th day of June, A. D. 1906; provided a copy of this order be published in The Washington Law Reporter once a week for three successive

[Seal] weeks before said date. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 20-St

**R. Golden Donaldson, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of John M. Welty, Deceased.**  
 No. 13,813. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Adelaide G. Welby, it is ordered this 11th day of May, A. D. 1906, that Harry E. Welty, Stag Hotel, Van Buren street, Chicago, Ill., and all others concerned, appear in said court on Thursday, the 21st day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned—the first publication to be not less than thirty days before said return day.

[Seal] WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 20-St

**W. E. Ambrose, Solicitor**

**In the Supreme Court of the District of Columbia.**

**Charles W. H. Stock v. Frederick Stock et al.**  
 No. 26,030. Equity Doc. No. 58.

The object of this suit is to have partition by sale of lot numbered one hundred and seventeen (117) in Frank J. Dieudonne and others' subdivision of square numbered one hundred and fifty-one (151), as said subdivision is recorded in the office of the surveyor of the District of Columbia in book 17, page 131, in the city of Washington, District of Columbia, the distribution of the proceeds of sale to the parties entitled thereto and incidental relief prayed for in the bill of complaint. On motion of the complainant, by Wm. E. Ambrose, his solicitor, it is, this 14th day of May, A. D. 1906, ordered that the defendant, William Stock, alias William Stack, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and The Washington Times once a week for three successive weeks prior to said return day. By the Court:

[Seal] HARRY M. CLABAUGH, Chief Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 20-St

**E. H. Thomas, Solicitor**

**In the Supreme Court of the District of Columbia.**

**Mattie P. Billingsley v. Chastain M. Billingsley, Wilda Wade.** No. 26,193. Equity Docket No. 58.

The object of this suit is to obtain a divorce from the bond of marriage now existing between complainant and defendant Billingsley because of the alleged adultery of said defendant with the co-respondent, Wilda Wade. On motion of the complainant, it is, this 9th day of May, A. D. 1906, ordered that the defendant Wilda Wade cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and the Evening Star once a week for three successive

[Seal] weeks. By the court: HARRY M. CLABAUGH, Chief Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 20-St

**Legal Notices.**

**Jesse H. Wilson and Jesse H. Wilson, Jr., Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**Estate of Hiram R. Smith, Deceased.**

No. 13,612. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Bernard T. Janney, executor thereunder, it is ordered this 15th day of May, A. D. 1906, that Ida M. Smith, Arthur C. Smith, Frederick M. Smith, Stella Smith, Helen Smith, Harry Smith, Barton Smith, and Ralph Smith, and all others concerned, to appear in said court on Tuesday, the 19th day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 20-St

**J. Dawson Williams, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of John Crane, Deceased.**

No. 13,677. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by J. Dawson Williams, it is ordered, this 18th day of May, A. D. 1906, that Michael, Daniel, Patrick and James Crane, otherwise known as Creain, the unknown heirs at law and next of kin of John Crane, deceased, and all others concerned, appear in said court on Tuesday, the 19th day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WEN-

[Seal] DELL P. STAFFORD, Justice. Attest: M. J. Griffith, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 20-St

**Blair & Thom, Attorneys**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William R. Garnett, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 14th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 14th day of May, 1906. ELLEN G. MARSHALL, MARY R. GARNETT, NANNIE B. GARNETT, 2009 I st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,461. Administration. [Seal.] 20-St

**Sheehy & Sheehy, Attorneys**

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Joseph P. Brass, Deceased.**

No. 13,637. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Thomas P. Brown, it is ordered this 14th day of May, A. D. 1906, that Howard Smith and Julia Smith Bee, of Allegheny County, State of Pennsylvania, and the unknown heirs at law and next of kin of said deceased, if any there be, and all others concerned, appear in said court on Monday, the 25th day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WEN-

[Seal] DELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 20-St

# The Washington Law Reporter

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WASHINGTON, D. C. - - - - JUNE 8, 1906

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## DECISIONS BY THE COURT OF APPEALS.

Carriers; Freight; Initial Rate; Conversion of Property.

In *Bradshaw v. Baltimore and Potomac Railroad Company*, the suit was to recover damages for the alleged conversion of certain horses. It appeared that four race horses were shipped from Tampa, Fla., to Washington, and on the advice of the agent of the initial carrier they were shipped as one consignment at an agreed rate of \$130.10, and a bill of lading was issued to that effect. On arrival of the horses in Washington plaintiff presented the bill of lading, together with \$130.10, to the defendant company, which declined to deliver them, contending that it had in its possession a way bill from the initial carrier which directed it to collect \$201.60. Plaintiff declined to pay this amount, and the horses were placed in a livery stable for six days, when the defendant company offered to deliver them to plaintiff on payment of the amount, \$130.10, called for by the bill of lading. Plaintiff refused to receive them, declaring that the horses had been damaged to the extent of several thousand dollars, and thereafter the defendant sold them as unclaimed freight. Suit was then brought to recover their value. In the trial court the judgment was in favor of defendant. This judgment is reversed by the Court of Appeals, the court holding, in an opinion by Mr. Justice Duell, that the rate named in the bill of lading issued by the initial

carrier controlled; that the refusal of defendant to deliver the horses on presentation of the contract was evidence of a conversion, and that a suit for the value of the horses was properly brought.

## Specific Performance; Insufficiency of Evidence.

In *Knott v. Giles*, the appeal was from a decree of the court below in favor of complainant in a suit for the specific performance of a contract for the sale of real estate. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, reverses the decree, holding that the evidence was insufficient to support a decree for specific performance, and directs the dismissal of the bill without prejudice to the right of complainant to pursue his remedy at law if so advised.

## Contracts; Attorney's Fees; Decrees Affirmed.

In *Jones v. Slaughter and Slaughter et al. v. Loeb*, the appeals were from decrees in two separate suits against the estate of a decedent to recover proportionate parts of certain moneys paid by the Republic of Mexico to said estate on account of legal services rendered by the decedent. The trial court disallowed the claim in the first case, and reduced the claim in the latter from \$9,000 to \$6,875.58. The Court of Appeals, in opinions by Mr. Chief Justice Shepard, affirms the decrees in both cases.

## Taxes; Suit to Recover Overpayment.

In *District of Columbia v. Glass*, the appeal was from a judgment of the trial court in favor of the plaintiff in a suit by the Perpetual Building Association to recover an alleged overpayment of taxes on its gross earnings. The Court of Appeals affirms the judgment in an opinion delivered by Mr. Justice McComas.

## Negligence; Defective Sewer Trap.

In *Bissell v. District of Columbia*, the suit was to recover for personal injuries sustained by falling through a sewer trap alleged to be out of repair. The trial court rendered a judgment in favor of defendant, and this judgment is affirmed by the Court of Appeals in an opinion by Mr. Justice McComas.

## Criminal Law; Gaming Table.

In *Nelson v. United States*, the plaintiff in error was found guilty in the Police Court on a charge of setting up a gaming table, and sentenced to pay a fine of \$50 or in default to be imprisoned in jail three months. The judgment is reversed by the Court of Appeals and the discharge of the defendant directed, Mr. Justice Duell delivering the opinion of the court.

## Court of Appeals of the District of Columbia.

GEORGE B. STARKWEATHER, APPELLANT,  
v.

HERBERT W. T. JENNER ET AL., APPELLEES.

TRUSTEES' SALE; INADEQUACY OF PRICE; FIDUCIARY RELATIONS; PURCHASE BY ONE OF SEVERAL MEMBERS OF A SYNDICATE; LACHES.

1. Inadequacy of price at a sale by trustees is not of itself sufficient ground for avoiding the sale, unless such inadequacy be so gross as to suggest fraud.
2. A sale by trustees of property of the estimated value of \$24,000 for \$17,100 will not be set aside for inadequacy of price where the proof shows affirmatively that the trustees acted with great propriety and good judgment, that the sale was absolutely fair, and where every effort to prove collusion or improper conduct on the part of the trustees or the purchaser and his associates wholly failed.
3. Not every contract between two or more individuals, whereby it is agreed that one is to bid on and become the purchaser of property for the joint benefit of himself and others, is void as against public policy.
4. One member of a syndicate may, by agreement entered into in good faith between himself and other members who had made large investments therein, purchase for their joint benefit at a sale by trustees of the property of the syndicate to satisfy an encumbrance existing against the property at the time it was purchased by the syndicate; and if the sale be fairly made, it is their right to purchase the property at the lowest price for which it can be obtained.
5. While the relation between the members of a syndicate having a community of interest in its property is a fiduciary one, such relation does not preclude one of such members, in behalf of himself and other members, from purchasing the property at a sale brought about by a third party, which he or they had no part in procuring, and over which he or they could not have had control.
6. A delay of five years on the part of another of the members of such syndicate in bringing suit to set aside the sale or, in the alternative, to have the purchaser decreed to hold the property in trust for all the members of the syndicate, the property in the meanwhile having largely enhanced in value, held to preclude him from relief; and a decree dismissing his bill affirmed.

No. 1538. Decided April 4, 1906.

APPEAL by complainant from a decree of the Supreme Court of the District of Columbia, in Equity, No. 20,205, dismissing a bill filed to set aside a sale under a deed of trust or to have the purchaser decreed to hold the same in trust, etc. Affirmed.

*Mr. Richard P. Evans, Mr. James E. Padgett, Mr. Edwin Forrest, and Mr. A. W. Thomas* for the appellant.

*Mr. B. F. Leighton and Mr. R. Golden Donaldson* for the appellee.

Mr. Justice McCOMAS delivered the opinion of the Court:

This is an appeal from a decree in equity dismissing the bill filed by Starkweather, the appellant, praying the Supreme Court of this District to set aside a sale of land made by Cole and Duvall, trustees, under deed of trust, to Jenner the appellee, or, in the alternative, to decree that Jenner hold title to the property he purchased for the benefit of the appellant and other persons, members of the syndicate which before such sale owned the land. The land sold contained seven acres and was a part of ten acres owned by such syndicate, the land lying in Washington, between Fourteenth and Sixteenth streets extended, and known as the

"Crescent Heights" syndicate purchase. Under the syndicate agreement this land was vested in Croissant and Johnson, trustees, appellees herein.

The amended bill was filed April 1, 1903, the original bill probably a short time prior to that date. The record omits all reference to the original bill.

It appears that the appellant was the owner of the two parcels of land comprising ten acres, and that early in 1892 he conveyed both parcels to the appellees Croissant and Johnson as trustees for the shareholders in the syndicate who had united to purchase the property for \$75,000. There were to be thirty shares each of the value of \$2,500. The encumbrances upon the property were several deeds of trust aggregating \$39,000, and among these encumbrances was a deed of trust to Gaither to secure \$7,553.34, executed January 29, 1899, wherein Cole and Duvall were trustees, payable four years after date with interest. This lien was upon the seven-acre parcel.

The appellant conveyed the said two parcels to Croissant and Johnson, trustees, on May 2, 1892. Finally Gaither directed Cole and Duvall, trustees, to sell the seven acre property covered by his deed of trust. The trustees advertised the property for sale in November, 1897, and on the day of sale the property was knocked down to Ricker, who paid the \$1,000 deposit money, but did not further comply with the terms of sale.

Ricker purchased for the appellant. Cole and Duvall, trustees, upon payment of \$300 each time by appellant, twice postponed the time of consummating the sale. Neither Ricker nor Starkweather, the real purchaser, who was also a large shareholder in this syndicate, complied with the terms of sale. The trustees readvertised the property. Thereupon Ricker filed a bill in equity in the court below to restrain such sale. This bill was finally dismissed on February 3, 1898, and after due publication, Cole and Duvall, trustees, again offered the property for sale. On the day of sale, Starkweather by his agent, Silver, and Jenner, the appellee, a shareholder in the syndicate, and others were bidders. The property was knocked down to Silver, and Starkweather met the requirement for a deposit of a thousand dollars by offering certificates of stock in the Forest Lake Cemetery Company; this security the trustees, Cole and Duvall, declined to accept, and immediately reoffered the property, and at this sale a few minutes afterward, Jenner, the appellee, became the purchaser of the seven-acre parcel for \$17,100. Jenner, having complied with the terms of sale, the property was conveyed to him by Cole and Duvall, trustees, on February 2, 1898. The auditor's report distributing the money was confirmed and the trustees disbursed the money accordingly.

The appellant in his amended bill charged that Croissant and Johnson, trustees, and Jenner, a shareholder in the syndicate, who had associated several other syndicate members with him, conspired, first, by declining to pay the interest due to Gaither to hasten the public sale of the property; and, secondly, by Jenner and his three associates combining and agreeing not to bid against each other for the prop-



erty, and for their own benefit to bid in the property for as small a sum as possible, and not exceeding \$24,000. It appears that all of the thirty syndicate shares except six were sold. The appellant received eleven shares in addition to \$11,000 in cash and the payment of certain judgments against him by the trustees, and he still holds four of these shares. Six of these shares remained in the possession of Croissant and Johnson, trustees, to be sold for the payment of the encumbrances and expenses, and it is charged that said trustees, in collusion with the appellee and to secure him an unlawful advantage in the purchase of said property, invited and assisted the sale under the Gaither deed of trust, although it was their duty and with their power as trustees to pay the interest thereon, and to assess the shareholders pro rata to meet such interest and other expenses of holding the syndicate property. In lieu thereof the appellee and others paid the interest due on said deed of trust up to the year 1896, when these persons refusing longer to pay the interest, upon default the property was advertised and sold.

The appellee admits the power of Croissant and Johnson to assess the shareholders, but alleges that the shares became unmarketable and the persons who had advanced the interest became unwilling to advance more because of a suit in equity brought by the appellant, and by reason of misstatements of the appellant whereby the shares became unmarketable and the trustees of the syndicate could not negotiate any of them to pay either encumbrances or interest thereon.

The appellee avers that he purchased the property for himself and certain other shareholders who were willing to join him and contribute the purchase money, and that he and they so acted in order to save, if possible, the money he had already advanced and he did not refuse an interest in the purchase to any shareholders willing and able to pay for the same. The appellee denies all collusion and fraud. Cole and Duvall, trustees, assert that the sale was fair and that they had no knowledge of any combination on the part of the appellee and others to improperly acquire the property and do not believe such combination existed. Croissant and Johnson, trustees, say they were unable to pay the Gaither deed of trust at maturity and unable to sell any of the six shares remaining in their hands, and that the deed of trust gave them no power and imposed no duty on them to pay off lien debts by making an assessment upon shareholders, and that they could not make any assessment whatever upon shareholders unless requested to do so by at least a majority of such shareholders, and finally, that it was impossible to raise any money whatever on assets of the syndicate in order to pay off the Gaither lien and thereby prevent the sale. Croissant and Johnson, trustees, say that for sometime they met the payment of interest by making loans personally or by obtaining loans as trustees from a bank. They deny all collusion with the appellee or anybody in relation to the purchase of the seven-acre tract by the appellee.

There are twelve assignments of error, some of which we need not consider because the

matters therein are included in the others which we deem material.

1st. Under the fourth assignment of error the appellant contends that the relationship of the shareholders in the "Crescent Heights" syndicate land, whether they be partners or tenants in common or cestuis que trustent, or hold other joint relationship, was actually such as created among them a fiduciary relationship, a community of interest, which made it unlawful and inequitable for the appellee and the three shareholders associated with him to combine to bid in the syndicate property for as small a sum as possible at the auction sale under the Gaither deed of trust for their personal benefit, and that they thereby sought to and did extinguish the rights and interests of the complainant and all other of the shareholders in the seven acres sold by Cole and Duvall, trustees.

The appellant mainly relies upon the following writing, signed by Jenner, the appellee, and Campbell, Spear, and Parker, three other shareholders:

We, the undersigned, hereby appoint Herbert W. T. Jenner, trustee, of Washington, D. C., our attorney-in-fact, to bid for us at an auction resale of about seven acres of land near Washington, D. C., to take place on December 16, 1897, under a deed of trust or any other postponement of said resale, or subsequent resale, to bid in the property for as small a sum as possible, the outside limit to be twenty-four thousand dollars (\$24,000).

And we hereby agree to pay Mr. Jenner our proportionate shares of the total cost and tax deeds on said property already obtained by him, and we agree to pay our proportionate shares of the deposit money on the day of sale, and the balance of the purchase money within the period and on the terms set forth in the advertisement under which the sale is made, our said proportionate interests or shares to be as stated below under our respective signatures.

The appellant insists that by this secret agreement, and other means, appellee gained an unlawful and inequitable advantage over him in the purchase of the land, and that such purchase should be set aside, or, in the alternative, should be held a constructive trust inuring to the benefit of the appellant and the other shareholders in the "Crescent Heights" syndicate land. It should be observed that the appellant, at each time Cole and Duvall, trustees, offered this parcel for sale, had sought to buy the land for his own benefit by the intervention of his own agent, and when it was finally sold had in the same manner bid, and the property was knocked down to his agent, but the trustees declined to accept the security offered by the appellant in lieu of the required deposit money. It is true the appellant testifies that he all the while intended to give all the shareholders the benefit of his purchase if he secured the property at either of these offerings of the same at public sale, but it is also true he carefully concealed from all the other shareholders his selfish intent. While the appellant protests that he was aware that a court of equity would compel him to treat his associate shareholders equitably, he also says that he had consulted with his attorney, and he had secretly bid for the seven-acre tract under the inspiration and

advice he had received from his attorney, who had told him "Your way to do is to bid that in through a third party that you can trust, then you will hold the whip hand over them and not be dictated to as you have been heretofore." He concealed from every shareholder the fact that he was bidding for the property; he did not bid in person. At the first sale he procured Ricker to buy the property in Ricker's name for the appellant's benefit. Ricker sought in the equity court to prevent a resale by Cole and Duvall, trustees. The appellant denies that he authorized his agent, Ricker, to institute such suit. It is manifest, however, that Ricker had no motive nor interest in so doing, and that the appellant had. At the second sale the appellant bid for the property through another agent, and in his name bought the property on February 3d, 1898, for about \$24,000, and failed to furnish the deposit money required, and immediately thereafter the auctioneer reoffered the property and sold it to the appellee, the highest bidder, for \$17,100.

We observe the appellant waited about five years after the sale of which he now complains and then filed the bill in equity we are here considering, asking that the sale to the appellee be set aside; or, since that is impossible, that the court decree that the appellee Jenner hold the title to the property he purchased five years before in trust for all the shareholders in the "Crescent Heights" syndicate in proportion to their respective holdings, and that the appellee make an accounting with such shareholders.

The witness Gordon estimates the seven acres were worth about \$24,000 at the time of the sale, and about \$40,000 at the time the appellant filed this bill in equity. He testified that prior to the sale there was a great stagnation in real estate in this section, and that at the time of the sale the seven-acre parcel was worth from three to four thousand dollars per acre, but that about the time the appellant brought this suit the witness would have given from five to six thousand dollars an acre for this parcel. We will later advert to the long delay of the appellant in bringing this suit, and the circumstance that he waited until this land purchased by the appellee had greatly advanced in value.

Under the fifth, sixth, seventh, and eighth assignments of error the appellant further contends that the evidence shows that the sale of the land made to Jenner, the appellee, was collusive and unlawful, because the circumstances attending the making of the agreement between Jenner and the three shareholders associated with him, shows that the agreement was designed to defraud the appellant and the other shareholders.

The appellant testifies he first learned of the existence of this agreement when Campbell, one of the signers, filed a bill in equity against Jenner, the appellee.

It appears that the amended bill in the suit referred to was filed December 21, 1898, and it seems that the appellant speedily gained knowledge of this effort of Campbell to make Jenner account respecting the purchase of the seven-acre tract. Jenner's testimony shows that he acted for the three persons and himself who joined in the agreement to purchase. It does not appear

that he extended like opportunity to other shareholders to associate with him either before or after he became purchaser of the land. That the sale of Cole and Duvall, trustees, was in every respect fair is undisputed.

The effort of the appellant to show that there was no necessity for the sale of the land fails. The debt secured by the Gaither lien was due in January, 1893, and in October, 1897, Gaither, the holder of the note, in writing, instructed Cole and Duvall, trustees, to advertise and sell the tract because of default in the payment of interest due in July of that year. There is some evidence that Gaither did not insist upon the payment of the long over-due debt, and that he several times was indulgent, at the appellant's instance, in giving delay in the payment of the interest. When none of the parties concerned procured payment of interest, Gaither directed the sale to proceed, and later, at the instance of appellant, delayed the sale. It is clear that the appellee had several times advanced money to pay interest to prevent the sale of the land of the syndicate. Croissant and Johnson, trustees, were either unable or neglectful in the payment of interest upon the encumbrances, but there is no evidence to connect the appellee and his associates therewith, and there is much in the record to disprove collusion between these trustees and Jenner. It appears in the record that when an effort was made to assess the shareholders the appellant sought the aid of the court to restrain the assessment, and did thus restrain a certain assessment, though this proceeding was subsequent to the sale of the land to the appellee.

We have carefully examined the circumstance attending the auction sale whereat the appellee purchased this land, and we are convinced that in every respect the sale was fair and that the appellant's case utterly fails to show collusion. That the appellant was a bidder there was not disclosed. Jenner bid openly in his own name. Wright, representing Mrs. Hubbard, who held the second trust, was an open bidder for his client, and other persons bid upon the property. It is true that the appellant's bid of \$24,100 considerably exceeded the final sale to Jenner at \$17,100, and it is also true that Jenner's associates had empowered him to bid \$24,000, and that under their agreement to buy the property as cheaply as possible he was the highest bidder and became the purchaser when the property was immediately thereafter reoffered at the lower price named. The appellant attributes fraud to the agreement of Jenner and his associates to buy the property at the lowest possible price. It could scarcely be expected they would agree to buy it at the highest possible price; such an agreement would have been absurd. The question here is whether there was such community of interest or fiduciary relation on the part of the appellee and his associates with their fellow shareholders as forbid them to bid at all. If we conclude they could properly bid upon the land, it was natural they should bid at the public bidding for the lowest bid for which the property could be obtained.

Had the price been grossly inadequate, the court below should have set the sale aside, not because these persons had not bid more, but because the price accepted by the trustees was

deemed grossly inadequate. The court below ratified this sale in an appropriate proceeding in equity, and we are not convinced that the price was so inadequate that the court should have set it aside.

The appellant by his ninth assignment of error insists that the price was so inadequate as to suggest fraud. Mere inadequacy of price at a trustee sale is not of itself sufficient ground for vacating the sale. The inadequacy in this instance is not so gross as to shock the mind. While inadequacy of price is an auxiliary argument, allied with circumstances calculated to cast suspicion on the sale, it can not have that effect in this instance where the proof affirmatively shows the sale to have been absolutely fair, wherein the trustees, Cole and Duvall, acted with great propriety and good judgment, wherein every effort to show collusion or improper conduct on the part of Croissant and Johnson, trustees, or of Jenner and his associates, has absolutely failed.

In our opinion the appellant's attempt to reverse the learned court below rests upon two circumstances: The first, that the appellant bid up this property to \$24,100, and failed to deposit the cash required by the terms of the sale, and that thereupon the property was reoffered and was purchased by the appellee, the unquestioned highest bidder, for \$17,100; and secondly, that the appellee had entered into the agreement to purchase which we have before recited. In our opinion, there is no evidence in this record to prove fraud actual or constructive. There is a failure to show collusion between the defendants or any of them. We do not extend this opinion by a review of four or five trivial circumstances, most of which were innocent, the rest of which are unimportant. Several transactions relating to the three-acre tract, and most of them occurring after the sale to the appellant of the seven-acre tract of land, we deem so unimportant that we need not discuss them here.

The appellant's bill is plentiful in accusation, and his testimony in his own behalf abounds in suggestion of improper conduct, and the argument of counsel and their brief is plentifully supplied with expressions of understandings and the tacit consent of trustees, Croissant and Johnson, in behalf of Jenner and Spear, two of the purchasers, but the testimony falls far short.

To sum up the matters in the record, this is a case in which a number of persons, in a highly speculative period, bought lands from the appellant which he obtained at a small price, and which the shareholders took at a very high price. A long period of depression in real estate prices followed, during which the trustees of the syndicate could not sell the shares undisposed of at any reasonable price, and the appellee and others interested advanced interest money to delay sales by lien holders, and the appellant also endeavored to stay such sales. When, under Gaither's lien, the seven acres were offered at public sale, the appellant was on hand, a secret bidder, to buy on the occasion. The appellee was usually there or thereabout watching the sale, and on the last occasion he openly purchased the property in his own name, and it thereafter appeared he had purchased in behalf of himself and three other shareholders.

We deem it unnecessary to review the authorities upon which the appellant here relies. We think the Supreme Court, in several cases quite similar to the case we are here discussing, have clearly stated the principles which lead us to affirm the judgment of the learned court below.

The proof in the record satisfies us that the appellee and his associates were unwilling to stand by and see their very considerable investment in the "Crescent Heights" syndicate lands swept away by a sale under a lien existing prior to the purchase of the land by the syndicate, and therefore agreed to buy the property in the hope that they would thus save the money they had invested. It also appears that Starkweather endeavored to do the same thing in the same way, and with a like intent and motive. The appellee, having a private agreement with his associates, bid openly in his own name. The appellant secured another person to bid, as we have said.

As the Supreme Court said in *Twin-Lick Oil Co. v. Marbury*: "In short, there was neither actual fraud nor oppression. No advantage was taken of defendant's position as director, or of any matter known to him at the time of the sale affecting the value of the property, which was not as well known to others interested as it was to himself, and that the sale and purchase was the only mode left to defendant to make his money." *Twin-Lick Oil Co. v. Marbury*, 91 U. S., 587, 588.

That the appellee occupies one of those fiduciary relations where his dealing with the subject-matter and with the parties having community of interests is viewed with jealousy by the courts and may be set aside on slight grounds, is a doctrine founded on the soundest morality and often recognized by the Supreme Court. *Twin-Lick Oil Co. v. Marbury*, supra, 589; *Koehler v. Black River Falls Iron Co.*, 2 Black, 715; *Drury v. Cross*, 7 Wall., 299.

"Defendant was at liberty to bid, subject to those rules of fairness which we have already conceded to belong to his peculiar position; for, if he could not bid, he would have been deprived of the only means which his contract gave him of making his debt out of the security on which he had loaned his money. We think the sale was a fair one. The company was hopelessly involved." *Twin-Lick Oil Co., v. Marbury*, supra, 590-591.

We have said that in this case we are convinced there was no fraud or unfair dealing on the part of the appellee and his associates in making the purchase, nor was there such gross inadequacy of price as would make the appellee's bid suggestive of fraud. Therefore, the case of the appellant here must rest on the fiduciary relation of the defendant, and in a case of that class, where this was the whole extent of the claim, not that the purchase shall be set aside and declared void for fraud of any kind, either express or implied, but that it should be upheld and made to operate as a resulting trust for the benefit of the complainant. The court was speaking of a case in which an executor with absolute control over real estate and with power to sell any part thereof to discharge debts, and finally to sell all and distribute among devisees, himself bought the in-

terest in the land of one of the devisees when sold under a judgment against such devisee, and the court said: "There is nothing in the transaction, from its inception to its final consummation, that imposed upon the defendant any duty incompatible with his right as a purchaser at the sale. The principle that a trustee may purchase the trust property at a judicial sale brought about by a third party, which he had taken no part in procuring, and over which he could not have had control, is upheld by numerous decisions of this court and of other courts of this country. *Prevost v. Gratz*, 1 Pet. C. C., 364, 378; *Twin-Lick Oil Co. v. Marbury*, 91 U. S., 587; *Chorpening's Appeal*, 32 Penn. St., 315; *Fisk v. Sarber*, 6 W. & S., 18. It is true that the rule upon this subject as stated by some text writers is more stringent than that stated in these cases. 1 *Perry on Trusts*, Par. 205; *Hill on Trustees*, 250. We think, however, that the language employed by them does not present a thorough and perfect generalization of the essential principles pervading the decisions upon this subject." *Alen v. Gillette*, 127 U. S., 589, 596.

From an examination of the adjudicated cases, we are of opinion that every contract between two or more individuals, whereby it is stipulated that one is to be the purchaser for the joint benefit of himself and others, is not to be held void as against public policy. It sometimes happens that unless two or more persons thus unite, and are thereby enabled to become purchasers, neither of them could have otherwise participated in the bid, and thus it may happen that the interests of the vendor are directly advanced by such an agreement. Upon all the testimony in this case, we are not convinced that this combination was designed to induce a sale at an inadequate price, but the plain design was that these associates wished to become purchasers at a price and fixed a limit as their maximum of the fair value of the property. When, however, such arrangement is made for the purpose and with a view of preventing fair competition, and by reason of want of bidders, to depress the price below the fair market value, the agreement and combination will be illegal. Fraud is not to be presumed where the contract is consistent with honesty of purpose and fair dealing.

Since the Supreme Court has declared that the doctrine of fiduciary relations here considered falls far short "of holding that no such contract can be made which will be valid," we conclude that this sale was not invalid, but whether liable to be avoided afterwards by other shareholders, upon the ground of fiduciary relations of the appellee to such shareholders, we need not discuss, although we think the facts in this case do not bring it within that rule. As was said by the court in *Twin-Lick Oil Co. v. Marbury*, supra, 591, the appellant "comes too late with the offer to avoid the sale," and the court held in that case that upon principle and authority and because of delay of nearly four years after the sale, the plaintiff had delayed too long in bringing his suit. In the case before us, where the appellee bought this real estate in times of depression, and during the subsequent five years the land he

bought had steadily increased in value, this appellant delayed five years before bringing this suit.

If we had serious hesitation in affirming the decree of the court below, this long delay on the part of the appellant should resolve all remaining doubts and determine us to sustain that decree.

The decree must be affirmed, with costs, and it is so ordered.

**Affirmed.**

**JOHN H. ADRIAANS, APPELLANT,**

**v.**

**WILLIAM B. REILLY ET AL.**

**EQUITY PRACTICE; BILL OF REVIEW; APPEALS; TRANSCRIPT OF RECORD.**

Where, on appeal from a decree dismissing a bill of review upon demurrer thereto, the transcript of record contained only the bill of review, the demurrer thereto, and the decree thereon, and did not contain the original bill, answers, or the decree sought to be reviewed, or any of the proceedings in the original cause, held that there was no sufficient transcript of record to enable the court to pass upon the questions sought to be raised by the appellant, and the decree dismissing the bill of review affirmed.

No. 1603. Decided March 6, 1906.

**APPEAL** by complainant from a decree of the Supreme Court of the District of Columbia, in Equity, No. 23,989, dismissing a bill of review. **Affirmed.**

*Mr. A. D. Smith* for the appellant.

*Mr. J. G. Bigelow* for the appellees.

**Mr. Justice DUELL** delivered the opinion of the Court:

This is an appeal taken from an order of the Supreme Court of the District of Columbia sustaining a demurrer to a bill of review and dismissing the same.

The bill of review recites that the appellant theretofore had filed a complaint against the defendants setting forth that he and the defendant Reilly had obtained judgments of the Supreme Court of the District of Columbia against the defendant Lingley; that Reilly's judgment was earlier in date, but that he took no proceedings to enforce it, while he, the complainant, had issued execution and filed a bill, or petition, in equity to enforce his judgment. Upon this state of facts he claimed that he was entitled to a declaration of priority of his judgment over that obtained by Reilly. He further averred that the defendants in that proceeding had appeared and answered, admitting that Reilly had neither issued an execution nor attempted by equitable proceedings to enforce his judgment. Thereupon a final decree was entered dismissing his bill. To review, reverse, and set aside such decree, upon the ground that he was entitled to a declaration of priority of his judgment over the Reilly judgment, because Reilly had not sought to enforce his judgment, is the relief sought by the bill of review.

The defendants appeared and demurred to the bill of review upon the ground that the court had passed upon all the things and matters set out in the bill of review and had entered a final decree therein which could only be reviewed by an appeal to this court from such final decree.

The cause coming on to be heard upon the bill of review and the demurrer thereto the court below sustained the demurrer and dismissed the bill of review and from that decree this appeal is taken. The transcript contains only the bill of review, the demurrer thereto, and the decree appealed therefrom. The record does not contain the original bill, answers, or the decree sought to be reviewed, or any of the proceedings in the original cause.

It is insisted upon the part of the appellees that there is no sufficient transcript of any record upon which this court can base any decision upon the merits. Counsel assert that as it is necessary that the "bill of review must be founded on some error apparent upon the bill, answer, and other pleadings and decree," it is necessary that the bill of review should contain them, or in some manner set forth and make them a part of the bill. This is undoubtedly correct. While the evidence can not be reviewed, yet the facts set forth in the pleadings and decree must be stated, for otherwise it would be impossible to discover upon what the decision of the court in the original proceeding was based. *Whiting v. Bank of U. S.*, 13 Peters, 6; *Putnam v. Day*, 22 Wall., 60; *Buffington v. Harvey*, 5 Otto, 99.

In the case at bar there is nothing before us, as has been stated, save the bill of review, demurrer, and decree, and these do not disclose sufficient facts which form a basis for any ruling upon the points urged by appellant. The first point which he presents is a statement that a judgment is not an enforceable lien at law against an equitable estate under the Code. So far as the record discloses this question is not presented. Nowhere does it appear that appellee Lingley has an equitable estate sought to be reached. We are not at liberty to infer that the original proceeding sought to be reviewed by the bill of review presented any such question. Whether a judgment is a lien, enforceable only by a bill in equity against an equitable estate under our Code, being the second question presented by appellant, necessarily can no more be passed upon by us, under the record herein, than can the question first presented.

For the same reason we are not at liberty to answer appellant's third contention that, as between two judgment creditors of a common debtor, having only an equitable estate to respond thereto, the creditor who first files his bill in equity to enforce the lien acquires thereby priority over the other. The record discloses that there are two judgment creditors and a common debtor, but nowhere does it appear that that debtor has any equitable estate.

As there is nothing in the record which affords a basis for any of the appellant's contentions, and as the court below, so far as the record discloses, could not have come to any different decision than it did, it follows that the decree appealed from should be, and it therefore is, affirmed, with costs.

Affirmed.

In a suit for the establishment and probate of a lost will, the attorney who drew the will is competent to testify as to its provisions. *Inlow v. Hughes* (Ind. App.), 76 N. E. Rep., 763.

## Court of Appeals of the District of Columbia.

### THE UNITED STATES OF AMERICA, APPELLANT,

V.

### WILLIAM H. DAY AND NICHOLAS E. YOUNG.

CONSULAR OFFICERS; ACCOUNTING; STATUTES; CONSTRUCTION BY EXECUTIVE DEPARTMENT.

1. In an action by the United States against the sureties on the bond of a vice-consul-general, that officer held estopped to claim one-half the salary of the consul-general for a certain period where he failed to notify the officers of the United States of his claim, as required by the consular regulations, in time to prevent the regular allowance of the entire compensation to his principal on settlement of the latter's account.
2. Where leave of absence was granted the consul-general for sixty days, and the vice-consul-general waived his right to one-half the salary of the consul-general during that time, to which he would otherwise have been entitled, vice-consul is not entitled to credit for any part of the salary during said period of sixty days.
3. The courts will adopt the construction given and uniformly observed by one of the departments of the Government to statutes enacted for guidance in the administration of business entrusted to it, unless the same be clearly erroneous.
4. The construction given by the State Department to the words "absent from his post," in sec. 1742, R. S., as meaning not absence from the consular office, but from the district in which it is situated, followed; and those words held not to mean mere temporary absence from the consular office when at the same time the officer is within his district, but either a willful or inexcusable abstention from the performance of his ordinary duties, or such continuous illness, beyond the period of a regular leave of absence, as may wholly disable him from such performance.
5. An instruction granted at the request of defendants, that the words "post of duty" mean the consular office, and if the consul-general was absent therefrom, and his duties were discharged by the vice-consul-general during such absence, the latter would be entitled to the former's salary for every day over the regular leave of absence, held error.
6. Defendant's held entitled to credit for any payments made by the vice-consul-general to the consul-general on account of salary due the latter, whether received for in his name by his wife or not, but not for payments made to the widow of the consul-general unless it be shown that she was the legal representative of her deceased husband and as such entitled to the possession of the money.
7. A contention by the United States that the salary of the consul-general for each quarter must be deducted from the receipts of such quarter, and from no subsequent quarter, denied.

No. 1562. Decided May 1, 1906.

APPEAL by the United States from a judgment of the Supreme Court of the District of Columbia, at Law, No. 44,918, entered upon the verdict of a jury in an action on a bond. Reversed.

*Mr. D. W. Baker and Mr. Jesse C. Adkins* for the United States.

*Mr. Henry E. Davis* for the appellees.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

The United States brought this action against William H. Day and Nicholas E. Young, sureties on the official bond of Charles H. Day as Vice and Deputy Consul-General of the United States at Berlin, Germany, to recover certain moneys alleged to have been collected by said officer and unaccounted for by him. The amount claimed to be due was \$1,583.74, but certain credits were admitted by the plaintiff,

which reduced the sum to \$1,354.19. The jury allowed certain other credits claimed by the defendants, and returned a verdict for the plaintiff for the sum of \$116.09. From the judgment rendered thereon the United States has appealed.

It appears that Charles H. Day was formerly consular clerk in the Berlin Consulate, and was made vice and deputy consul-general in December, 1897. Julius Goldschmidt was then consul-general and remained in office until his death, on November 2, 1898. Under the Consular Regulations, promulgated by the Department of State under the law, deputy consuls-general and vice-consuls-general perform the functions of their principal, both when he is temporarily absent or relieved from duty, and the vice consul-general assumes responsible charge of the office when the principal is absent from his post (R. S., sec. 1674, Regulations 17, 18, 19). When the consul-general is absent on leave for sixty days or less in one year, the vice-consular officer acting in his place is entitled to receive one-half the salary of his principal unless there is an agreement to the contrary. After the expiration of the leave of absence the vice-consular officer is entitled to the full compensation of the office. And if the principal absents himself from the post for a longer period than ten days, the vice consular officer is entitled to the full compensation for the excess over ten days. If the consul dies the vice is entitled to full compensation from the date of entering upon the duties of the office (Regulations, secs. 506, 571). Principal and vice-consular officers must render accounts of the business of their offices when in charge; and a vice-consular officer may waive his claim to his extra compensation and of the principal's compensation by agreement between them (Sec. 571).

It is provided by section 1742, R. S., as follows: "No diplomatic or consular officer shall receive salary for the time during which he may be absent from his post by leave or otherwise, beyond the time of sixty days in any one year."

2. The questions raised under the foregoing statutes and regulations, by special instruction given and refused on behalf of the respective parties, relate to three general items of credit claimed by Charles H. Day on account of salary and allowances, out of the funds collected and reported by him, for certain periods in February, April, May, July, and October, 1898, prior to the death of Consul-General Goldschmidt; and for part of the accrued salary of the latter paid to his widow after his decease. All of these were submitted to the jury and considered and allowed by them under the charge of the court.

Several of the items of credit claimed as defendants' principal's portion of the salary of the consul-general on account of the absence of the latter from his post are founded upon different grounds.

(1) As to the items of salary accruing in February, 1898, we think the court erred in permitting the jury to allow the same. The law applicable thereto was correctly stated in the thirteenth special prayer asked by the plaintiff, which the court refused. Although Charles H. Day now claims that the consul-general was

absent from his post during the several days in February, he made no report to the State Department to that effect, and made no claim for the salary due him on that account. Nor did he make any reports of business transacted by him as vice-consul-general during any such absence of his principal. On the other hand, the account of the consul general, ending March 31, 1898, contained no such notice, and was accompanied by his official certificate, showing that he had not been absent. Consequently his account was made up and settled later upon that basis. Having failed to notify the officers of the United States of his claim in the proper way, and in time to prevent the regular allowance of the entire compensation to his principal, we are of the opinion that he was estopped to set it up as a credit in this suit.

(2) The evidence is recited in a confusing way in the bill of exceptions, and we are unable to ascertain just what the conditions are that surround the special items of salary claimed in April and May. If upon another trial it should appear that his conduct, as regards them, may have misled the regular accounting officers of the plaintiff and induced them to act under the belief that the consul-general was not absent from his post during such times as he has claimed, and therefore to settle his accounts as correct, the rule laid down in respect of the preceding item will apply to these also.

(3) As regards the sixty days' leave of absence of the consul-general after July 1, 1898, we are also unable to ascertain with certainty what amount of his salary during that period was claimed by the vice-consul, although the special instructions asked indicate that some portion of it was in question. The evidence tended to show that the consul-general was granted this leave, and that he notified the proper authority of his intention to begin the same on July 1, 1898. During the sixty days the vice-consul-general would be entitled to one-half of the compensation of his principal under the regulation (sec. 506), unless he waived his right thereto. In connection with the foregoing evidence, an undated paper was offered, bearing the signature of Charles H. Day, in which his right to have one-half of the salary for that time was expressly waived on behalf of the consul-general, "while on his leave of absence." If this waiver applied to the particular leave of absence, and there seems to be no other to which it could apply, the defendants were not entitled to credit for part of the salary during that period. While the eleventh special instruction asked by the plaintiff may not have been completely applicable to the situation as presented, its substance should have been given.

(4) Another portion of the salary claim is for a period during which, after the expiration of his sixty days' leave of absence, the consul-general was ill and absent from the consular office, although at his home in the city of Berlin. The question here involved turns upon the meaning of the words, "absent from his post," as used in section 1742 R. S. Relating to this point, the ninth prayer of the plaintiff was to this effect: If the consul-general was within the city of Berlin during the time ending with his decease, on November 2, 1898, he was not absent from his post, though so ill as to be inca-

pacitated to perform any business whatsoever. This was refused. The tenth prayer, which was granted, was to the following effect: If the consul-general was within the city of Berlin during the same period and ill, but was able to, and did attend to some of the business at the consular office, and did confer with the deputy or vice-consul-general and sign the correspondence of said office, then he could not be considered absent from his post, and such time is not to be deducted from the leave of absence that had been granted him. The second prayer, granted at the request of defendants, was to this effect: The words "post of duty" mean the office at which the consular duties are performed; and, therefore, if the consul-general was absent from his said office and the vice-consul-general was there present and discharging the duties of the consul-general during such absence, he would be entitled to the salary of his principal for every day over sixty days on which he discharged said duties.

As we understand the evidence, the consul-general was absent from the consular district during part of his sixty days' leave which began July 1, but returned to his home in Berlin before its expiration, which would be, say, the last of September. He was then ill and remained in Berlin until his death on November 2. It would seem, from the several prayers above stated, that the vice-consul-general's claim of the salary was not only for all the time after the expiration of the leave of absence, but also for part of the time included therein. If, as heretofore remarked, the vice-consul-general waived his claim to the half of the salary during the leave of absence, his claim to that extent is inadmissible. And whether the consul-general was within or without the consular district during that period is of no consequence. If, as the evidence to which plaintiff's tenth prayer was directed tended to show, the consul-general, after his return to Berlin, assumed control of the direction of the affairs of the office, performed some of his duties in person, and signed all of the correspondence up to a certain date, the court was right in instructing the jury that he was not absent from his post during said time. The second prayer given for the defendants may have been intended as the counter merely of the proposition embodied in the plaintiff's ninth prayer that had been denied. It was broad enough, however, to deprive the plaintiff of some of the benefit of the tenth prayer which had been given to the jury, for it informed them that the post of the consul-general was the consular office, and absence therefrom, though not from the consular district, was absence from his post. Consequently the jury might well have understood that if the direction of affairs by the consul-general, his conferences with the vice-consul-general, and his signing of official reports and correspondence was done at his home and not at the consular office, he was nevertheless absent from his post during the time.

It is necessary, therefore, to consider whether, as broadly stated, this second prayer is founded on a correct view of the meaning of section 1742, R. S.

It appears from the evidence that the State Department has always understood absence

from his post by a consular officer to mean absence not from the consular office, but from the district in which it is situated, and that it has uniformly acted upon that construction. The established rule of the courts is to adopt the construction given and uniformly observed by one of the departments of the Government to statutes enacted for guidance in the administration of the business intrusted to it, unless the same be plainly erroneous. *Wedderburn v. Bliss*, 12 App. D. C., 485, 498, and cases there cited: 26 Wash. Law Rep., 293.

We are not prepared to say that this construction is plainly erroneous. When the words of a statute are susceptible of different meanings at all, they are to be given that construction which tends to effectuate the general purpose of their enactment. The absence of a public officer from his post of duty that is provided for by a statute must, in great measure, be determined by the character of the office, the nature of the duties, and the circumstances and conditions under which they are to be performed. This is illustrated by two decisions, the first of which is relied on by the appellees and the second by the appellant. *Engerman v. State*, 54 N. J. L., 247, 251; *Skinner v. Cowley Co.*, 63 Kan., 575, 581. In the first of those cases it was held that a judge who failed to appear at the appointed time and place for the session of the court was absent from his post, although he was not absent from the territorial jurisdiction of the court.

In the second case, a sheriff, whose duty it was generally to serve process and perform other acts within a county, was not absent while in the county, although he was not in attendance upon the court, being held therein at the time, which was one of his duties.

The consular district in this case extended beyond the limits of the city of Berlin, and the evidence shows that there was another city or town where an office is maintained that is under the supervision of the consul-general.

It is apparent that the consul-general might be called upon at times to visit and inspect the business of this subordinate office, and to perform certain duties pertaining thereto. It is reasonable to presume, also, that the performance of some of his duties might require him, at times, to perform some official act outside the precincts of his particular office building. In such cases it would be unreasonable to say that he was absent from his post. And it seems unreasonable to suppose that, under other ordinary conditions, it was intended by the framers of the statute he should be actually in his office during all of the business hours from day to day, in order to prevent his salary for the time being from passing to his deputy who would thereby be in charge of the office as vice-consul-general. Consequently, we think it was right to charge the jury that if the consul-general, though temporarily ill, was not absent from his post if he was able to, and did give direction to the business of the consulate, and supervise and sign all of the official correspondence relating thereto. Absence from his post, in the sense used in the statute, does not mean, in our opinion, mere temporary absence from the consular office itself, when, at the same time, the officer is within his district, but either a wilful or inexcusable



abstention from the performance of his ordinary duties, or such continuous illness, beyond the period of a regular leave of absence, as may wholly disable him from such performance.

In accordance with these views, we conclude that the learned justice was right in refusing the plaintiff's ninth special prayer, but that he erred in giving the defendants' second prayer without modification.

3. This brings us to the two remaining items of credit that were allowed the defendants by the verdict. One of these is for salary due to the consul-general from May 1 to June 30, 1898, amounting to \$670.32. The other, amounting to \$119.54, is for salary from July 1 to August 31, 1898. For these two payments receipts were presented that had been signed by Julius Goldschmidt, per Ida W. Goldschmidt, who was his wife. The second receipt is for \$652.17, but the witness Charles H. Day testified that only \$119.54 were actually paid to her. These receipts bear no date, but were shown to have been signed and delivered after the death of Mr. Goldschmidt. It is not made clear by the evidence that any of this salary was paid to the consul-general before his death, though the evidence is susceptible of that construction. The witness admitted, however, that \$119.54 were paid to this widow after his death. If any salary was due to the consul-general for those periods, as seems to have been the case, the defendants are entitled to credit for so much thereof as was actually paid to, or received by him, whether receipted for in his name by his wife or not. For the part paid to the widow after his death, the defendants are not entitled to credit in this action unless it be shown that she was the legal representative of her husband and as such entitled to the possession of the money. There was no evidence on this point. The fourth prayer requested by the plaintiff with respect to the item of \$119.54, paid after the death of the consul-general, should have been given. Upon another trial, the charge to the jury should embody the conclusions above expressed.

4. It is further contended on plaintiff's behalf that even if these sums were due to the consul-general and paid to him or to his legal representative, the defendants were not entitled to credit for the same, if, as it appears, the vice-consul-general had sufficient funds in hand from the receipts of the office before June 30, 1898, to pay the same. The contention, which was embodied in a prayer which the court refused to give, is that the salary for each quarter must be deducted from the receipts of that quarter, and from no subsequent one. While this seems to have been the usual and regular way of making settlements, it does not follow that the salary could not be deducted from the receipts of subsequent quarters. Our attention has been called to no statute regulating the matter. Owing to the illness of the consul-general, the circumstances surrounding the administration of the office were peculiar. The vice-consul-general, as we have seen, was not regularly in charge of the office all of the time. The consul-general was ill and doubtless in need of the money. If, therefore, the money was due him, and was actually paid over in good faith to him or his legal representative,

we see no reason why the defendants should not have credit for it.

5. We have been embarrassed in the consideration of this case by the complicated statement of the accounts of the consular office, which cover a considerable period of time, and the want of a condensed statement showing the particular items in controversy, together with the evidence explanatory of the same. Doubtless the same difficulty was experienced on the trial before the jury, and might have been obviated by preliminary proceedings under Common Law Rule 46 of the Supreme Court of the District.

For the reasons heretofore given the judgment will be reversed and the same remanded for a new trial.

Reversed.

JOHN BARNES, PLAINTIFF IN ERROR,

v.

DISTRICT OF COLUMBIA.

POLICE REGULATION; HACKS; LOITERING ON STREET. A conviction in the Police Court of plaintiff in error under an information charging him with stopping and loitering on the street at a place not a regular hack stand, in violation of sec 7, art. 10, of the Police Regulations, affirmed, when it appeared that he had, on several days, stopped his hack in the street in front of a hotel for hours at a time, which place is not a public hack stand, and his only defense was that regular customers of his had requested him to stand in front of the hotel, and that on the day of his arrest hotel carriages had stood alongside of his hack.

No. 1638. Decided February 20, 1908.

IN ERROR to the Police Court of the District of Columbia. Affirmed.

*Mr. W. J. Lambert* and *Mr. G. M. Brady* for the plaintiff in error.

*Mr. E. H. Thomas* and *Mr. F. H. Stephens* for the defendant in error.

*Mr. Chief Justice SHEPARD* delivered the opinion of the Court:

The plaintiff in error was convicted in the Police Court under an information charging him, as the owner of a licensed hack, with stopping and loitering on the street at a place not a regular hack stand, in violation of section 7 of article 10 of the Police Regulations of the District of Columbia, and has sued out a writ of error.

The evidence tended to show that the plaintiff in error had on two or three days stopped his hack in the street in front of the Raleigh Hotel for several hours at a time, which place is not a public hack stand. It did not appear that he had blocked the street or that he had been disorderly. He testified that regular customers of his had requested him to stand in front of the hotel, and that during the time of his stay, on the day of his arrest, hotel carriages had stood along side of his hack.

The validity of the regulation aforesaid, in respect of its terms and effect, and the power of the Commissioners to enact the same under the authority conferred by Congress have been repeatedly affirmed by this court, and is no longer an open question. *Gassenheimer v. D. C.*, present term, ante, p. 174; *Stephens v. D. C.*, 16 App. D. C., 279; 28 Wash. Law Rep., 394.

The regulation under which the conviction was had is a different one from that involved in a former prosecution of the plaintiff in error. *Barnes v. D. C.*, 24 App. D. C., 458: 33 Wash. Law Rep., 13. Nor does the proof here go so far as in that case to show that the hack was waiting in the street in front of the hotel under an engagement either with a guest of the hotel or any person who had occasion to visit it for any purpose whatever. The statement that he had taken up his station in front of the hotel in accordance with the request of certain guests of the hotel who had been accustomed to engage his services when needed is not sufficient to raise the question of the right of hotel guests to direct carriages to stand in that place under special contracts for their personal use. Consequently, what was said in the disposition of that case has no bearing upon this. The direct purpose of the plaintiff in error in violating the regulation in this case seems to have been to raise the question of the right of the proprietor of the hotel to stop carriages in front of the same for the use of his guests. And the contention is that the regulation is unconstitutional because of its unwarranted and unjust discrimination between the carriages of the hotel proprietor and those of ordinary licensed owners of hacks for hire. The regulation, however, makes no such discrimination by its terms, and the right of hotel proprietors to keep a reasonable number of hacks or carriages in front of their hotels for the exclusive use of their own guests, and without obstructing the reasonable and lawful use of the street by other persons, was established by a decision of this court in a case where the District of Columbia had prosecuted a hotel proprietor. *Willard Hotel Co. v. D. C.*, 23 App. D. C., 272: 32 Wash. Law Rep., 163. The limited right of a hotel proprietor to keep hacks within speedy call for the accommodation of his guests, and no others, was declared to be like that of private owners generally and not within the regulation prohibiting drivers of hacks for hire from stopping at other places on the streets, not designated public hack stands, and soliciting the patronage of the public. In concluding the opinion in that case it was said: "What we mean to hold in the present case is that, subject to all reasonable regulations by the public authorities to prevent the use from becoming excessive, the hotel company has the right to station and maintain its own carriages on the street in front of its own premises for the transaction of its own business and the accommodation of its own guests without violation of any existing law or municipal ordinance."

The strict limitation of this right to a reasonable number of vehicles for the exclusive use, in good faith, of actual hotel guests, whose charges therefor are fixed and collected by the hotel proprietor or manager, has been declared in the recent case of *Gassenheimer v. D. C.* (January 17, 1906). And it was there said that the hotel proprietor can not maintain a stand for his own hacks for the use of the general public, under the pretext of accommodating his guests. We see nothing in these decisions which necessarily conflicts with the opinion of the Supreme Court in the recent case of *Donovan v. R. R. Co.* (October Term, 1905), the circumstances and nature of which

seem quite different. But were it conceded that there is a conflict between the doctrine of that case and those before mentioned we are unable to perceive how it could affect the case of the plaintiff in error. If the limited right that has been heretofore held to exist in hotel proprietors is, in fact, inconsistent with the principle declared in the *Donovan* case, since decided, the District of Columbia may raise the question by further prosecutions of hotel proprietors under this regulation, if so advised; but its final determination in either way could not affect the case of the plaintiff in error.

He was convicted of the violation of a regulation, the validity of which is well established, in so far as it applies to the act for which he has been prosecuted, and it is no defence to him to show that other persons have violated it with apparent impunity. That other persons may have escaped punishment, either through the failure of the municipal government to vigorously enforce the law in every possible case, or through the erroneous interpretation by the courts of the scope and effect of the law in particular cases, does not give him the right to violate the law and escape the consequences of his own act when regularly prosecuted therefor.

The judgment was right and must be affirmed. It is so ordered.

Affirmed.

The right of a non-resident to sue a foreign corporation doing business in the State and having agents located therein is sustained in *Reeves v. Southern R. Co.* (Ga.), 70 L. R. A., 513, provided the enforcement of the cause of action would not be contrary to the laws and policy of the State. All the other authorities on right of non-resident to sue foreign corporations are collated in a note to this case.

An agreement by an applicant for admission to an old folks' home to deliver to it all property which he may subsequently become the owner of, in consideration of maintenance during life, is held in *Baltimore Humane Soc. v. Pierce* (Md.), 70 L. R. A., 485, to be void as against public policy. The question of validity of agreement to transfer future-acquired property in consideration of maintenance is treated in a note to this case.

#### Patent Appeals Decided During the Past Week.

342. *Parker v. Lewis.* Affirmed. Opinion by Mr. Justice McComas.

350. *Gaines v. Carlton Co.* Affirmed. Opinion by Mr. Chief Justice Shepard.

351. *Buchanan, etc., Co. v. Breen.* Affirmed. Opinion by Mr. Chief Justice Shepard.

353. *Davis v. Garrett.* Affirmed. Opinion by Mr. Chief Justice Shepard.

355. *In re application of Crines.* Affirmed.

357. *Robinson v. Thresher.* Affirmed. Opinion by Mr. Chief Justice Shepard.

## RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

## Legal Notices.

## FIRST INSERTION.

John Ridout, Attorney

In the Supreme Court of the District of Columbia.

Edwin F. Abell, in his own right and as trustee, v. Elizabeth L. Abell et al. No. 23,833. Doc. 62.

Richard M. Venable, William Cabell Bruce, and Charles McH. Howard, trustees herein, having reported the sale at private sale to J. Louis Loose, for the net price of \$26,529.50, cash, of parts of lots six and seven, in William V. Corcoran's subdivision of square two hundred and thirty-nine, in the city of Washington, in the District of Columbia, as per plat recorded in book W. F., folio 142, in the surveyor's office of the District of Columbia, as fully described in the decree for sale passed herein, it is, this 7th day of June, 1906, ordered that said sale be, and it is hereby, finally ratified and confirmed, unless cause to the contrary be shown on or before July 7, 1906. Provided that a copy of this order be published in The Evening Star and The Washington Law Reporter once in each of three successive weeks before said last mentioned date. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 23-3t

[Seal]

Douglass &amp; Douglass, Solicitors

In the Supreme Court of the District of Columbia.

Elizabeth McCauley, Complainant, v. Frank Lundergan, Defendant. Equity, No. 26,238.

The object of this suit is for an accounting between the complainant and the defendant, and for a decree of the court vesting in the complainant the legal title to the property described in the bill. On motion of the complainant it is, this 5th day of June, 1906, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter. HARRY M. CLA- [Seal] BAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon. 23-3t

Asst. Clerk.

Gordon &amp; Gordon, Attorneys

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Theodore D. Trapier, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of June, 1906. JOSEPHINE L. TRAPIER, 17 Cooke Place. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,416. Administration. [Seal.] 23-3t

Stuart McNamara, Jr., Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John H. Dougherty, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 4th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of June, 1906. WM. T. FINN, 1420 N. Y. ave. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,705. Administration. [Seal.] 23-3t

## Legal Notices.

H. D. Gordon, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Nathan B. Prentice, Deceased.

No. 13,689. Administration Docket —

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Sarah C. Prentice, it is ordered this 8th day of June, A. D. 1906, that LeRoy P. Atkinson, Nathan P. Atkinson, Wm. A. Prentice, and all others concerned, appear in said court on Monday, the 9th day of July, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 23-3t

[Seal] day. WENDELL P. STAFFORD, Justice.  
Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 23-3t

E. H. Thomas and James Francis Smith, Attorneys  
In the Supreme Court of the District of Columbia,  
Holding a District Court.

In re the Opening of an Alley in Block Numbered Twenty-three (23) in Columbia Heights in the District of Columbia. District Court No. 684.

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of sections 1803 et seq. of the Code of Law for the District of Columbia, have filed a petition in this court praying the condemnation of the land necessary for the opening of an alley in block numbered 23 in Columbia Heights in the District of Columbia, as shown on a plat or map filed with the said petition, as part thereof, and praying also that a jury of five judicious, disinterested men, not related to any person interested in these proceedings and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States marshal for the District of Columbia to assess the damages, each owner of land to be taken may sustain by reason of the opening of the aforesaid alley, and the condemnation of the land necessary for the purposes thereof, and to assess the benefits resulting therefrom, including the expenses of these proceedings, as provided for in and by the aforesaid provisions of the Code. It is, by the court, this 6th day of June, A. D. 1906, ordered, that all persons having any interest in these proceedings be, and they are hereby, warned and commanded to appear in this court on or before the 19th day of June, A. D. 1906, at 10 o'clock A. M., and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be empaneled and sworn herein, and it is further ordered that a copy of this notice and order be published once in The Washington Law Reporter, and once in The Washington Evening Star, The Washington Post, and The Washington Times, newspapers published in the said District, before the said 19th day of June, A. D. 1906. It is further ordered, that a copy of this notice and order be served by the United States marshal for the said District or his deputies, upon such of the owners of the fee of the land to be condemned herein as may be found by the said marshal, or his deputies, within the District of Columbia, before the said 19th day of June, A. D. 1906. By the Court. JOB HARR- [Seal] NARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 23-1t

A. A. Hoehling, Jr., Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Samuel Henderson Griffith, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 2d day of July, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 6th day of June, 1906. WARREN G. GRIFFITH, Executor, by A. A. Hoehling, Jr., Attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,914. Administration. [Seal.] 23-3t

**Legal Notices.**

**E. H. Thomas and Jas. Francis Smith, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding a District Court.**  
**In re the Widening of an Alley in Square Seven Hundred and Fifty (750), in the District of Columbia.**  
 District Court, No. 683.

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of section 1808, et seq., of the Code of Law for the District of Columbia, have filed a petition in this court praying the condemnation of the land necessary for the widening of an alley in square numbered seven hundred and fifty (750), in the District of Columbia, as shown on a plat or map filed with the said petition as part thereof, and praying also that a jury of five judicious, disinterested men, not related to any person interested in these proceedings, and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States Marshal for the District of Columbia to assess the damages each owner of land to be taken may sustain by reason of the widening of the aforesaid alley, and the condemnation of the land necessary for the purposes thereof, and to assess the benefits resulting therefrom, including the expenses of these proceedings, as provided by the aforesaid provisions of the Code. It is, by the court, this 5th day of June, A. D. 1906, ordered that all persons having any interest in these proceedings be, and they are hereby, warned and commanded to appear in this court on or before the 18th day of June, A. D. 1906, at 10 o'clock A. M., and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be empaneled and sworn herein; and it is further ordered that a copy of this notice and order be published once in The Washington Law Reporter and once in The Washington Evening Star, The Washington Post, and The Washington Times, newspapers published in the said District before the 18th day of June, A. D. 1906. It is further ordered that a copy of this notice and order be served by the United States Marshal for the said District, or his deputies, upon such of the owners of the fee of the land to be condemned herein as may be found by the said Marshal, or his deputies, within the District of Columbia, before the said 18th day of June, A. D.

[Seal] 1906. By the Court: JOB BARNARD, Justice.  
 A true copy. Test: J. R. Young, Clerk, by  
 F. E. Cunningham, Asst. Clerk. 23-3t

**Edwin C. Dutton, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Mary W. Mytinger, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of June, 1906. MARGARET V. FRANKLIN, 27 K St. N. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,634. Administration. [Seal.] 23-3t

**J. J. Darlington and W. C. Sullivan, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**James Martin v. Jeremiah Boothe et al.**  
 No. 28,280. Equity.

**ORDER.**

The object of this suit is to perfect complainant's title to lot 8, in square east of square 664, Washington, D. C. On motion of the complainant, it is, this 6th day of June, A. D. 1906, ordered that the defendant, Jeremiah Boothe, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs, devisees, and assignees of Nathaniel Walker Appleton, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published for three months, once a week for three successive weeks during the first month, and twice a month during each of the two succeeding months in The Washington Law Reporter and The Washington Times. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 23-3t

Je 8, 15, 22, Jy 6, 13, au 3, 10

**Legal Notices.**

**Wm. B. Reilly, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Robert L. Beatty, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of June, 1906. RICHARD MURPHY, 206 11th St. N. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,600. Administration. [Seal.] 23-3t

**Walter C. Balderston, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John P. Hinkel, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 5th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 5th day of June, 1906. ANNA M. HINKEL, ANNA A. HINKEL, 119 C St. S. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,694. Administration. [Seal.] 23-3t

**A. S. Worthington, Robt. S. Hume, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Ellen O'Brien, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of June, 1906. JOSEPH ATKINS, 454 Pa. ave. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 10,958. Administration. [Seal.] 23-3t

**G. C. Gertman, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**William Carter, Complainant, v. Charles H. Wiltale,**  
**Defendant.**

Equity No. 26,188. Docket 68.

The object of this suit is to set aside tax sales and cancel tax deed to lot 22 in subdivision of G. W. Keating's estate in part of a tract of land known as Prospect Hill, in the District of Columbia, as per plat thereof recorded in the surveyor's office of said District, in Book Levy Court No. 2, at page 48. On motion of complainant, it is, this 6th day of June, A. D. 1906, ordered that the defendant, Charles H. Wiltale, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks prior to said return day in The Washington Law Reporter and The Washington Times. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 23-3t

**In the Supreme Court of the District of Columbia.**  
**In re the Assignment of George W. Cook et al.**  
 No. 20,062. Equity.

This cause being referred to me to state the account of the assignees and distribution of the fund, notice is hereby given that I will proceed with the reference on Wednesday, the 18th day of July, at 10 o'clock A. M., at the auditor's rooms in the United States Court House in this city. All persons having claims against the said George W. Cook, and Bertha A. Cook, individually or as partners, are notified to present such claims with the proofs at the said time and place. JAMES G. PAYNE, Auditor. 23-3t

**Legal Notices.**

**J. J. Darlington and W. C. Sullivan, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Elizabeth R. Talty et al. vs. E. Welsh Ashford et al.**  
 No. 26,283. Equity.

**ORDER.**

The object of this suit is to substitute trustees under the deed of trust on lot 39, square 634, Washington, D. C., recorded in liber 2314, folio 285, of the District of Columbia Land Records. On motion of the complainant, it is, this 6th day of June, A. D. 1906, ordered that the defendant, E. Welsh Ashford, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three

[Seal] successive weeks prior to said day in The Washington Law Reporter. **WENDELL P. STAFFORD, Justice.** True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 23-3t

**Erskine Gordon, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Eli E. Kirby, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 25th day of June, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies, or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 1st day of June, 1906. **EVANDER FRENCH**, by Erskine Gordon, Attorney. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,885. Administration. [Seal.] 23-3t

**Thomas C. Bradley, Attorney**

**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court for said District.**

**William P. Gray, Complainant, v. William Marshall, His Unknown Heirs, Devisees, and Allenees, Defendants.** Equity Docket No. 26,221.

**ORDER FOR PUBLICATION.**

The object of this suit is to perfect the title of the complainant to that part of sublot one hundred and eleven (111), in square eight hundred and sixty-seven (867), in the city of Washington, D. C., beginning at the southwest corner of said sublot and running thence north sixty (60) feet, thence east sixteen (16) feet, thence south sixty (60) feet, thence west sixteen (16) feet to the place of beginning. On motion of the complainant it is, this 6th day of June, A. D. 1906, ordered that the defendant, William Marshall, or, if he be dead, his unknown heirs, devisees, or allenees, cause his appearance to be entered herein on or before the first rule day occurring after the expiration of thirty days from the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published for a period of thirty days once a week for three successive weeks in The Washington Law Reporter and The Washington Post. **WENDELL P. STAFFORD, Justice.** True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 23-3t

**A. B. Duvall, Solicitor**

**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**

**American Security & Trust Company, Executor, Petitioner, v. Fidelity Trust Company, Trustee, George H. Kyd, E. Welsh Ashford, Respondents.** Equity, No. 26,259. Doc. 58.

The object of this suit is to substitute new trustees under a certain deed of trust described herein in the place and stead of George H. Kyd and E. Welsh Ashford. On motion of the complainant, it is, this 6th day of June, A. D. 1906, ordered that the defendant, E. Welsh Ashford, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said day.

[Seal] **HARRY M. CLABAUGH**, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 23-3t

**Legal Notices.**

**Rashton & Siddons, Attorneys**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Patty Miller Stocking**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of June, 1906. **EDWARD W. PARKER**, U. S. Geological Survey. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,613. Administration. [Seal.] 23-3t

**Aldis B. Browne, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Nannie B. Maloney**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 7th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of June, 1906. **GEORGE RICHARDS**, Headquarters Marine Corps, Mills Bldg., Wash., D. C. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,630. Administration. [Seal.] 23-3t

**Joseph H. Stewart, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **James Henderson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of June, 1906. **FANNIE HENDERSON**, 415 E. st. S. W. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,679. Administration. [Seal.] 23-3t

**SECOND INSERTION.**

**Hamilton, Colbert & Hamilton, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Francis H. Hill**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of May, 1906. **GEORGE E. HAMILTON**, Century Building. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,485. Administration. [Seal.] 22-3t

**Chas. F. Wilson, Attorney**

**In the Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**In re Estate of Edward Farquhar, Deceased.**  
 No. 13,370.

**ORDER.**

The executors having reported that they have sold property described as sublot 139 in square 738, known as premises 523 2d street Southeast, city of Washington, District of Columbia, to William W. Slye, for the sum of thirty-one hundred dollars cash, it is by the court, this 28th day of May, A. D. 1906, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 29th day of June, A. D. 1906. Provided a copy of this order be published in the Washington Law Reporter once a week for each [Seal] three successive weeks before said last named day. **WENDELL P. STAFFORD, Justice.** A true copy. Attest: James Tanner, Register of Wills. 23-3t

**Legal Notices.****Hugh T. Taggart, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Hugh Tuohy, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of May, 1906. JACOB H. MERTZ, 11 4th st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,444. Administration. [Seal.] 22-31

**Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary D. Spackman, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of May, 1906. HENRY E. SPACKMAN, 1634 16th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,287. Administration. [Seal.] 22-31

**F. H. Stephens, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Mary E. Clawson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 25th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of May, 1906. JAMES E. HEFFNER, 1834 8th st. N. W. Attest: W. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,662. Administration. [Seal.] 22-31

**W. Mosby Williams, Solicitor****In the Supreme Court of the District of Columbia.****Susan E. Hall et al. v. J. Dominic Bowling et al.  
Equity No. 25,951. Doc. 57.**

Charles J. Martell and W. Mosby Williams, trustees, having reported sale at public auction of the real estate decreed to be sold in this cause, to wit: lot 107 in Gilbert's subdivision, in square 675, Washington City, District of Columbia, to Sarah G. Mullen, for the sum of \$3,665, it is, therefore, this 31st day of May, 1906, ordered that said sale will be ratified and confirmed on the 29th day of June, 1906, unless cause to the contrary be shown before said last-mentioned day. Provided that a copy of this order be published in each of three successive issues of The Washington Law Reporter prior to the last-mentioned date. By the court: HARRY [Seal] M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 22-31

**Edwin S. Bailey, Solicitor****In the Supreme Court of the District of Columbia.****Edwin W. Spalding, Complainant, v. The Unknown  
Heirs of Clark Hamill, Deceased, Defendants.  
Equity No. 26,047. Doc. 58.**

The object of this suit is to declare title in Edwin W. Spalding to duplicate bounty warrant No. 56,276, the original of which was issued to Clark Hamill on the 14th day of February, 1857, under act of Congress of March 3, 1855. On motion of complainant, it is, this 29th day of May, A. D. 1906, ordered that the defendants, the unknown heirs, next of kin, legatees, or devisees of Clark Hamill, deceased, cause their appearance to be entered herein on or before the first rule day occurring three months after the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for the period of three months in The Washington Law Reporter and

The Washington Post. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. June 1, 8; July 6, 13; Aug 3, 10

**Legal Notices.****THIRD INSERTION.****Barnard & Johnson, Attorneys****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John B. Simmons, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 18th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of May, 1906. CLARA B. SIMMONS, 718 19th st. N. W. Attest: W. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,345. Administration. [Seal.] 21-31

**R. A. Curtin, Solicitor****In the Supreme Court of the District of Columbia.****Mary Molloy et al. v. Ellen O'Brien et al.****No. 26,188. Equity Docket No. 58.**

The object of this suit is to partition by sale the estate of William Santry, also known as William Santry, deceased, and to distribute the proceeds to heirs at law and parties entitled thereto. On motion of the complainants, it is, this 22d day of May, A. D. 1906, ordered that the defendants, Margaret Santry, John Carpenter, Joseph Carpenter, May Carpenter, and Lillie Carpenter, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published

In the Washington Law Reporter once a week [Seal] for three successive weeks. By the Court: HARRY M. CLABAUGH, Chief Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 21-31

**Wolf & Rosenberg, Attorneys****In the Supreme Court of the District of Columbia,  
Holding an Equity Court.****Robert F. Poore et al., Complainants, v. Joseph H. Poore et al., Defendants. Equity, No. 25,590.****ORDER CONFIRMING SALE NISI.**

Maurice D. Rosenberg, trustee, having reported to the court that he has sold the real estate situate in the county of Washington, District of Columbia, namely: all the parts of the tract of land known as "Lucky Discovery" or "Rock of Dumbarton," of which Francis Poore, deceased, died seized. Said land has a front on Wisconsin avenue of fifty-five (55) feet by an average depth of two hundred and ten (210) feet, and is improved by two frame dwellings, under rental, to Byron Richards, for the sum of thirty-three hundred dollars, it is, by the court, this 22d day of May, A. D. 1906, ordered that the said sale be ratified and confirmed unless cause to the contrary be shown on or before the 25th day of June, 1906. Provided this order be published once a week for

three successive weeks in The Washington Law Reporter prior to said date. By the Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 21-31

**[Filed May 22, 1906. J. R. Young, Clerk.]****C. W. Stetson and P. H. Marshall, Solicitors****In the Supreme Court of the District of Columbia.****Charles W. Stetson, Trustee, v. Mary A. Robinson et al.****Equity, No. 25,971. Doc. 57.****ORDER NISI.**

This cause came on to be heard at this term upon the report of Charles W. Stetson and Percival H. Marshall, the trustees herein appointed by decree to sell part of original lot 2, square 579, beginning on D street 33 feet west of the southeast corner of said lot, running thence west on said street 15 feet 6 inches; thence north 32 feet; thence east 2 feet 6 inches; thence north 102 feet 6 inches; thence east 13 feet; thence south 184 feet, except the rear 7 feet 6 inches of said lot heretofore condemned by marshal's jury for an alley; that they have sold said part of said lot to Charles H. Parker for \$2,350. It is, this 22d day of May, 1906, ordered, adjudged, and decreed that the said sale be ratified and confirmed unless cause to the contrary be shown on or before the 23d day of June, 1906. Provided a copy of this order be published once a week for three successive weeks before the last-mentioned date in The Washington Law Re-

porter. WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 21-31



**Legal Notices.**

**Chas. W. Darr and Richard A. Curtin, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the State of New Jersey, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary L. Porter, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the 21st day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of May, 1906. WALTER E. ENNIS, Lambertville, N. J. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,518. Administration. [Seal.] 21-St

**Albert Sillers, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John F. Kelly, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 4th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of May, 1906. MARY E. BRENNAN, 825 8th st. N. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,518. Administration. [Seal.] 21-St

**S. R. Bond, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Lowder Dashiell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of May, 1906. J. MURDOCH CLARK, 2 M st. S. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,582. Administration. [Seal.] 21-St

**Hayden Johnson, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**  
**Estate of Elizabeth J. Reynolds, Deceased.**  
**No. 13,498. Administration Docket -**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Alexander Reynolds, and Joseph Walter Reynolds, it is ordered this 24th day of May, A. D. 1906, that Barbara Reynolds, Frederick Reynolds, Josephine Reynolds, and all others concerned, appear in said court on Monday, the 25th day of June, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 21-St

**Blair & Thom, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Frances Oliver Johnson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of May, 1906. LOREN B. T. JOHNSON, 1211 Connecticut ave. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,684. Administration. [Seal.] 21-St

**Legal Notices.**

**Thompson & Leskey, Solicitors**

**In the Supreme Court of the District of Columbia.**  
**Mary J. Cooper, Complainant, v. Thomas E. Wag-**  
**man et al., Defendants. Equity, No. 25,978.**

Upon consideration of the report of Ralph Given, trustee, of the sale of the property known as No. 701 Twenty-second street Northwest, and for the sum of three thousand and eight hundred dollars, cash, this day filed in this cause, it is, this 21st day of May, A. D. 1906, ordered that the said sale, as made and reported by the said trustee, be and the same is hereby ratified and confirmed, unless cause to the contrary thereof be shown on or before the 25th day of June, A. D. 1906; provided a copy of this order be published in The Evening Star and The Washington Law Reporter once a week for three successive weeks prior to the date last afore-

[Seal] said. WENDELL P. STAFFORD, Justice.  
 True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 21-St

**E. S. McCalmont, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Charlotte Campbell et al. v. George H. Calvert et al.**  
**Equity No. 23,935.**

The trustees herein having reported an offer from Henry A. Vieth and Glenn E. Husted to purchase the tract of land in the District of Columbia, called "Greenvale," lying between Woodridge and Langdon, containing 27.65 acres, more or less, described in the bill of complaint in this cause by metes and bounds, for the sum of \$25,400, net, payable \$7,000 in cash, \$5,000 in one year, \$5,000 in two years, and the balance in three years, from consummation of sale, on or before July 15, 1906, from consummation of sale, to be secured by deed of trust on the property sold, with interest payable semi-annually at 5% per annum, said offer being conditioned on the right of the purchasers to anticipate payments on the deferred payments, and to have released from the lien of the trust portions of said property in fixed proportion to the amount of the anticipated payments, which condition, with others, are fully set forth in the offer of said purchasers, a copy of which is filed in the cause with the report of the trustees; it is this 24th day of May, 1906, ordered, that said offer be accepted, and sale made thereunder be ratified and confirmed, unless cause to the contrary be shown on or before the 25th day of June, 1906, provided a copy of this order be published in The Washington Law Reporter once each of three successive weeks before said last named day. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 21-St

**Benj. S. Minor, Executor**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**Estate of Margaret E. Stone, Deceased.**  
**No. 12,568.**

Upon consideration of the petition and report of Benjamin S. Minor, executor, filed herein on the 24th day of May, A. D. 1906, that he has sold to George H. Higbee lot 29, in square 263, being the northeast corner of 14th and F streets, in the city of Washington, District of Columbia, the same having a frontage of about 28.89 feet on F street by a depth of about 55.89 feet on 14th street, for the sum of one hundred and ninety thousand dollars (\$190,000), payable in the manner set forth in said offer, it is, this 24th day of May, A. D. 1906, by the court, adjudged, ordered, and decreed that the said sale to the said George H. Higbee be, and the same is hereby, ratified and confirmed, unless cause to the contrary be shown on or before the 25th day of June, 1906. Provided a copy of this decree be published in The Washington Law Reporter and in The Evening Star once a week for three successive weeks before

[Seal] said date. WENDELL P. STAFFORD, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 21-St

**A. A. Alexander, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Calvin Dietrick, late of the State of New York, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 21st day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of May, 1906. DANIEL W. O'DONOGHUE, 412 5th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,650. Administration. [Seal.] 21-St



# The Washington Law Reporter

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WASHINGTON, D. C. - - - - - JUNE 15, 1906

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## OPINIONS BY THE COURT OF APPEALS.

### Husband and Wife; Action by Wife for Alienation of Husband's Affection.

In *Dodge v. Rush*, the appeal was from a judgment in favor of defendant, entered upon a verdict directed by the trial court in a suit for the alienation of the affections of plaintiff's husband and for criminal conversation. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, affirms the right of the wife to maintain such an action, holding that the ancient rule of the common denying to the wife a right of action under such circumstances, while recognizing the right of the husband to sue for the alienation of the affections of his wife, has long since ceased to exist. The right of the wife to maintain an action for criminal conversation with her husband is also upheld. It is also held that the evidence in the case required its submission to the jury; and the judgment is reversed and the cause remanded for a new trial.

### College; Expulsion of Student; Mandamus to Compel Restoration.

In *United States, ex rel. Gannon v. President and Directors of Georgetown College*, the appeal was from an order of the court below dismissing a petition for mandamus to compel the respondents to restore the relator to the rolls of the freshman class of Georgetown College, from which he had been dropped for absence

from college without leave of the authorities. The Court of Appeals, in an opinion by Mr. Justice McComas, dismisses the appeal without passing upon the question of the right of the respondents to expel the relator, holding that inasmuch as, with the expiration of the school year, the freshman class had ceased to exist, its members having been advanced to a higher class, the question raised became merely a moot question, and the relief asked was beyond the power of the court to grant.

### Condemnation of Land; Appeals.

In *Winslow v. Baltimore and Ohio Railroad Company*, the appeal was from a final order or decree of the court below in condemnation proceedings instituted by the appellee to condemn for its use a part of a tract of land belonging to the appellants. The appellee filed a motion to dismiss the appeal. The Court of Appeals, in an opinion by Mr. Justice McComas, overrules the motion to dismiss the appeal, but affirms the judgment of the court below confirming the award of the appraisers.

### Decedent's Estates; Domicile.

In *Thom v. Thom*, the appeal was from an order of the Probate Court granting letters of administration to the mother of deceased. The question involved was as to the domicile of decedent. It appeared that after living for some time in New Jersey he had gone west for his health, and had then come to this District, remaining here until his death. His brothers and sisters contended that his domicile was in New Jersey, and that his estate should be administered in accordance with the laws of that State, by which the brothers were entitled to preference in the granting of letters of administration. The Probate Court held that his domicile was in the District of Columbia, and granted letters of administration to his mother. This holding is affirmed by the Court of Appeals, in an opinion by Mr. Justice Duell.

### Personal Injuries; Evidence.

In *Kebon v. Washington Railway and Electric Company*, the appeal was from a judgment for defendant in an action for personal injuries. The question involved was as to the admissibility of certain evidence. The judgment is reversed by the Court of Appeals in an opinion by Mr. Justice McComas. The Chief Justice and Mr. Justice Duell delivered a concurring opinion, agreeing with the conclusion that the judgment should be reversed, but basing their decision on one only of the two reasons assigned by Mr. Justice McComas in the opinion delivered by him.

#### Death of Edwin B. Hay.

The announcement of the death of Col. Edwin B. Hay, which occurred at his residence in this city on Monday evening, June 11, 1906, after a brief illness, came with a shock to the entire community. Few men were better or even so well known as he, and none enjoyed more largely the cordial esteem and affection of our people. While a native of Virginia, he had lived in this District from early boyhood, and he was actively devoted to its interests. Possessed of a most engaging personality, and literally overflowing with good nature, he spent his energies freely in behalf of others, and to many thousands his death will bring a consciousness of personal loss.

Colonel Hay was an honored member of the Bar of this District, and was regarded as a lawyer of fine ability. He was a recognized expert in the matter of handwriting and kindred subjects, and of late years had given his life quite largely to that phase of activity, testifying as an expert not only in cases in our local courts, but in other courts throughout our country. Among other cases in which he testified were the Sharon will case, in California; the Molineaux case, in New York, and the recent libel case brought by Colonel Mann, of "Town Topic" fame, against Collier, and which proved such a fiasco. He was also a writer of ability, and some of his verses were widely published.

The announcement of his death was made in the several branches of the Supreme Court of this District, and an adjournment had in respect to his memory. It is probable that a meeting of the Bar will be held at an early day to pay tribute to his character as a man and lawyer.

#### Condemnation of Land for Sewer; Damages; Speculation Injuries.

In *Seuffarle v. Macfarland et al.*, the appeal was from an order of the court below in a proceeding to condemn land for outfall sewer purposes. The trial court refused instructions requested by the appellant by which the jury were authorized to allow damages for depreciation in the value of his land resulting from the foul odors which would arise from the sewer when completed. The Court of Appeals, in an opinion by Mr. Justice McComas, holds that the instructions were properly refused, because they involved conjectural and speculative injuries. The instructions given by the trial court are held to have been sufficient to fully inform the jury as to their duty in the premises.

When in need of printing of any description call on the Law Reporter Printing Company, or drop a postal, and their representative will call on you.

#### Court of Appeals of the District of Columbia.

JOHN A. BENSON, APPELLANT,

v.

UNITED STATES.

CRIMINAL LAW; BRIBERY OF UNITED STATES OFFICIAL; INDICTMENT; SUFFICIENCY OF; JOINDER OF OFFENSES; ALLEGATION OF BREACH OF OFFICIAL DUTY.

1. Section 5451, R. S., defining and prescribing the punishment for bribery of an official of the United States, construed, and held to include an attempt to induce an officer to do or to omit any act in violation of his lawful duty on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity.
2. An indictment for violation of said section alleged that, on a date named, an investigation of the unlawful appropriation of public lands by named persons (defendant being one of them) was ordered by the Secretary of the Interior; that such investigation was immediately begun and carried on by special agents under instructions from said Secretary, to whom their reports were to be transmitted; that if the contents of said reports were disclosed to the persons whose acts were being investigated the objects of the investigation would be defeated, and it was therefore ordered that said reports be kept secret; that while said investigation was pending, defendant paid to an official of the Land Office (who was charged, among other enumerated duties, with the supervision of the work of special agents and consideration of their reports relating to public lands, and with the charge of legal proceedings for the cancellation of unlawful and fraudulent entries upon public lands), to induce him to reveal to defendant the contents of said report when the same should come into his hands in his official capacity in violation of his lawful duty, etc. Held, that the indictment sufficiently charged an offense under said section 5451, R. S.
3. The reference in the second and subsequent counts of an indictment to the "circumstances and conditions set forth in the first count," held sufficient to incorporate such matters into the second and subsequent counts.
4. An indictment under section 5451, R. S., contained eight counts, in seven of which the offer of money was alleged to have been made to the same person in the same official relation to induce the same violation of official duty in respect of the same matter, while in the eighth count the only variation was in the fact that defendant was alleged to have given money to another official. Held, that the joinder of the offenses in one indictment, but in separate counts was authorized by section 1024, R. S.
5. Every incidental, yet necessary duty, incumbent upon an official to perform need not be designated by statute; but the head of a department of the Government may prescribe regulations of his office and of its several bureaus and for the custody of papers and reports in investigations; and a breach of such regulations by an official of the department would be one act in violation of his lawful duty within the meaning of section 5451, R. S.
6. In the construction of the indictments as of other writings, the court leans to the interpretation that will make them effectual, avoiding what would render them null.

No. 1649. Decided April 3, 1906.

APPEAL by defendant from an order of the Supreme Court of the District of Columbia, holding a Criminal Court, overruling a demurrer to an indictment for bribery. Affirmed.

*Mr. R. Golden Donaldson, Mr. J. C. Campbell, and Mr. F. H. Platt* for the appellant.

*Mr. D. W. Baker and Mr. A. B. Fugh* for the United States.

Mr. Justice McCOMAS delivered the opinion of the Court:

This is a special appeal allowed from an interlocutory judgment of the court below over-

ruling the defendant's demurrer to an indictment for bribery.

The indictment contains eight counts and is twenty pages in length. In substance, the first count alleges that on January 1, 1901, and thenceforward until April 1, 1903, Benson was engaged with Hyde at San Francisco in the business of unlawfully obtaining from the United States the possession of, and the title to, its public lands outside of forest reserves, and unlawfully exchanging such public lands for school lands of California and Oregon, obtained by said Benson and Hyde during said period from said States by a false and fraudulent practice of them, Benson and Hyde, whereby title to and possession of divers large tracts of such school lands were obtained by them by the various methods of the fraudulent practice fully set out in this count.

On January 9, 1903, an investigation of said alleged unlawful appropriation of said public lands of the United States was ordered by the Secretary of the Interior with objects set out in this count, and also with a view to begin legal proceedings for cancellation of patents to such lands obtained by Benson and Hyde and to punish guilty persons. Such investigation was thereupon begun and carried on by Pugh and Steece, special agents, under said order of the Secretary, and under instructions that they transmit a report to the Secretary, which report, when transmitted, would be for the exclusive use of the proper officers, including the Secretary, the Commissioner of the General Land Office, and the chief of the special service division of the latter, the report to be secret and not for the consideration of any person not a proper officer, and particularly not for the inspection of Benson or Hyde, and would be such in character that tending to establish the charge against Benson and Hyde, its contents, if revealed to either of them, would render it more difficult and expensive to establish such unlawful appropriation of lands by them and defeat the objects of the investigation.

That during the period aforesaid one Woodford D. Harlan was chief of the special service division in the Land Office; that said Harlan, under the law and regulations prescribed by the Secretary of the Interior, was charged with the duty of protecting the public land from unlawful entry and appropriation and the supervision of the work of special agents and the consideration of their reports relating to public lands, and with the charge of proceedings for cancellation of unlawful and fraudulent entries of the same, and of preparing cases for legal proceedings when necessary, and during such period and by reason of his official functions it was the duty of the said Harlan, when discharging the aforesaid duties, to keep for the exclusive use of said proper officers of the Interior Department and of the Land Office all information and reports coming to his Department by virtue of his office and to not allow such information or reports to be given to or obtained by persons charged with such violations of law or with making such fraudulent entries, and said Benson, on March 15, 1903, in the District of Columbia, unlawfully gave \$200 to said Harlan, being an officer of the United States and a person acting for and on

behalf of said United States in an official function, under the Department of the Interior, with intent to induce said Harlan to violate his lawful duty; that is, to reveal to said Benson, when the same should come to his, Harlan's, hands in his official capacity, the contents of the special agents' report pertaining to said investigation.

And so the grand jurors, etc., say that said Benson, on March 15, 1903, in manner and form aforesaid, unlawfully did give money to an officer of said United States and to a person thus acting for and on behalf of said United States in an official function under and by authority of a department of the Government of said United States with intent then and there on the part of him, the said John A. Benson, to induce the said officer and person to do an act in violation of his lawful duty.

This count charges the defendant with the crime of bribery under section 5451, Rev. Stat., which provides:

"Every person who promises, offers, or gives . . . any money or other thing of value . . . to any officer of the United States, or to any person acting for or on behalf of the United States in any official function, under or by authority of any department or office of the Government thereof . . . with intent to influence his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, . . . or with intent to induce him to do or omit to do any act in violation of his lawful duty, shall be punished as prescribed, etc."

Upon this special appeal from the order of the court below overruling the defendant's demurrer to the indictment, the defendant makes ten assignments of error. His counsel have argued these with great ability and ingenuity. The first two are general and depend upon the other specific objections to this indictment, all of which, except the tenth, more especially apply to the first count, though urged, however, against the whole indictment.

It is said this count is bad because therein it appears that at the time of the alleged payment to Harlan the special agents' report therein referred to had not come within the possession, knowledge, or reach of Harlan, and it is not alleged that it ever would, and even if it should the count fails to show that Harlan had any duty concerning it or that he ever would have any such duty, and the charge of bribery under section 5451 can not be based upon a payment to an officer to induce him to perform an act as to which he has not and may never have any duty, for Harlan was not forbidden by any lawful duty to reveal to the defendant the contents of the said report even if he ever should be in a position to do so.

Counsel for defendant say that the indictment and this count is framed under the last clause of section 5451, making it a crime to give money to any person acting for the United States in any official function with intent to induce him to do, or omit to do, any act in violation of his lawful duty, for they say this count alleges the money to have been given "with intent . . . to induce the said Woodford D. Harlan (or William E. Valk) to do an act in violation of

his lawful duty, that is to say, to reveal to him, the said John A. Benson, *when the same should come to his hands and knowledge in his official capacity*, the contents of the report of the report of the said special agents."

They insist bribery can not be predicated upon a payment made to induce employees of the Land Office to reveal a report not then in existence, and not within their official functions or knowledge, and whether it would be depended upon contingencies, and bribery can not be predicated upon the happening of a contingency. Under this count, it is said, Harlan had no present duty with reference to a then non-existent report, and since it might never exist, Harlan might never have the duty in respect to it, and the essential element of bribery under this section is that the act to be done, or omitted, must be a violation of the official lawful duty. If money be paid to an official outside of his official duties, the transaction is innocent, and the original act can not be made corrupt by the happening of some future contingency bringing the act to be done within the scope of the official's duty.

If we assume for a time that this statute against bribery of officials, as well as this count under it, be aimed at reports which had not come, and might never come, into the officials' hands or knowledge, we observe in the first place, the authorities relied upon do not support the defendant's proposition and argument as we have stated it. In *Yee Gee's case*, 83 Fed. Rep. 145, Gardner, holding at the time an appointment from the Secretary of the Treasury as an interpreter of the Chinese language, was offered a bribe by Yee Gee to secure from Gardner a favorable translation of Chinese documents which Yee Gee expected would be offered in evidence before the commissioner upon a criminal charge there pending against Yee Gee, but the court held that Gardner was an employee of the Treasury Department and his appointment did not constitute him an officer to translate Chinese documents in a judicial proceeding; he could not even be an interpreter before the commissioner without such commissioner's authority, which had not been given. The court held the alleged attempt of bribery by Yee Gee was not a completed offense under section 5451, because it was not intended to influence Gardner in respect of his duty under his appointment by the Secretary of the Treasury, that Gardner was not at the time acting for or on behalf of the United States in an official function, and the court concluded: "An offer made to a person in contemplation of a mere probability that he may be called to perform official functions, and intended to influence his conduct in performance of such functions if he shall be so called, does not violate this statute."

In *State v. Butler*, 178 Mo., 272, an officer of a company having a contract to dispose of the garbage of St. Louis was indicted for attempted bribery of a member of the board of health to procure that member to vote for a renewal of the contract under a statute which defined bribery as an offer to give money to any public officer to influence his vote on any question which may by law be brought before him in his official capacity, but there was at the time no

law authorizing the question on which he was sought to be influenced by bribery to be brought before him. The court held that the attempt to bribe this member had no relation to his "official capacity."

*State v. Howard*, 137 Mo., 297, is a case hardly pertinent. There Howard sought to induce Hays to commit perjury, upon condition that defendant Howard was thereafter indicted for the offense for which he was then only under recognizance, and the court held that this was not a "cause, matter, or proceeding under the statute, because not then pending, and hence the defendant was not guilty of any offense under the statute." *State v. Joaquin*, 69 Me., 218, is substantially the same as the case just mentioned.

*Newman v. State*, 97 Ga., 367, was a case in a justice's court, and the justice had entered an oral agreement of counsel that the attorney of the losing party "might appeal by consent," but after judgment no bond or security was given as required by the statute. The appeal was void and no case was lawfully pending in the appellate court in reference to which the offense of attempting to bribe the presiding justice could be committed and the judgment was reversed. And so also in *Fairfield v. State*, 14 Ala., 605, the court said it must be shown the proceeding was pending before the officer at the time the gift was made.

In *United States v. Gibson*, 47 Fed. Rep., 834, where defendant was indicted under this section for offering money to an internal revenue officer to induce him to set fire to a distillery in his charge, the court properly held the only duty of such officer was to see that the spirits produced in the distillery were made to pay the internal revenue taxes, and that it was not in the line of his official duty to burn a distillery. Of course the bribe offered was for an act entirely outside the official function of the gauger and was not made to induce the officer to do or omit to do any act in violation of his official duty.

In *People v. Johnson*, 47 N. Y. Law Rep., Oct. 14th, 1905, upon the conviction of the coroner of the county of New York for receiving a bribe, judgment was reversed because the woman who was subject to a criminal abortion by Doctor Adams died in New Jersey, and the coroner of New York had not and never could have any official function to exercise in respect of her death.

The able counsel for the defendant in the case before us insist that the cases just reviewed sustain the contention that the essential element of the crime of bribery under this statute is that the act to be done or omitted must be a violation of the official's lawful duty. These cases sustain that proposition, but all of them were cases, whatever happened to be the varying form of the bribery statute in the different States, in which the bribe or offer to bribe did not relate to any pending matter in which the person to be induced might or could have at any time an official lawful duty, and in nearly all of them he never could have any official duty, because he never had any official function.

Defendant's counsel are industrious in striving to limit the gravamen of this count to the special agents' report, and they argue that, since in this count it appears affirmatively that

such report had not come within the possession or knowledge of Harlan, and there is no allegation that it ever would, Harlan had no duty concerning it, and it does not appear he ever would have such duty, and, therefore, bribery can not be predicated upon the payment to Harlan to induce him to perform an act as to which he has not and may never have any duty.

We believe that both section 5451 and this indictment based upon it have a much broader scope, and include an attempt to induce an officer to do or omit any act in violation of his lawful duty on any question, matter, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity; that the investigation described in the count was the pending proceeding, and the report thereon by the special agents was a pending matter, an incident only in the investigation which was the pending proceeding. This count alleges that on January 9, 1903, an investigation of the unlawful appropriation of public lands by Benson and Hyde was ordered by the Secretary of the Interior; that such investigation was immediately begun and carried on by Pugh and Steece, special agents, under instructions from the Secretary of the Interior; that their report be transmitted to the Secretary, the contents of which, if revealed to Benson and Hyde, injurious consequences alleged would be produced "and the objects of the said investigation defeated," and this count further charges that Benson gave money to Harlan to induce him to reveal to Benson the "contents of the report of the said special agents" pertaining to the investigation aforesaid. It is charged the investigation was ordered January 9, 1903, and was begun and carried on and the money was given on March 15th, following, and at that time, as we construe this count, the investigation was still a pending proceeding. The making of the report upon the pending investigation was but a part of it. It matters little that the report had not yet been filed and might never be filed, the investigation was pending soon after January 9, 1903, and was still pending on the date when this count charges Benson gave money to Harlan. Harlan's official duty respecting such investigation, his supervision of the work of special agents and preparing instructions for them, and considering when received their reports of alleged violation of public land laws referred to them for investigation, and Harlan's whole duty, and sufficient facts from which his duty arose are fully and properly set forth in this count. This statute would be useless if a cunning person by the unlawful practice set out in this count could thereby possess himself of the public land and could with impunity bribe, or offer to bribe, an official to whom the report of a pending investigation of the offender's unlawful acts would come, if while the investigation was still a pending proceeding the offender so carefully timed the bribe as to offer it before the report was filed. We can not believe that Congress intended to provide opportunity for bribery like that here alleged, that the inducement could be offered to the official at the time the revelation would be most useful to the offender and with impunity to him at that very time. By the defendant's

construction, after the special report was filed it was no longer a pending matter; before it was filed and when it might never be filed it was not a pending matter, and under this statute Benson could only bribe Harlan at the moment of filing. It was the investigation that was pending and the special agents were making it and the reports of special agents were but a part of the pending proceeding which was pending before the reports could come and would be pending after they came, and at any period during its pendency Harlan had official duty, and if Benson before or after the incoming of the report gave money to Harlan, he gave it to induce him to do an act in violation of his lawful duty and with intent to influence his action on a matter or proceeding pending in the words of the statute and by law brought before him in his official capacity. Therefore, we conclude that in respect of the 3rd, 4th, 5th, and 6th assignments of error the court below did not err in overruling the demurrer to the first count in this indictment. After we consider the whole indictment, we will recur to this question.

Second. The second count alleges that Benson on March 20, 1903, in this District, "under the said circumstances and conditions set forth in the first count of this indictment while knowing all and singular the premises set forth in that count, unlawfully gave said Harlan \$200, with the same allegations of intent as in the first count."

The third count differs from the second count only in charging payment on March 25, 1903, of \$100. The references in both these counts to the circumstances and conditions set forth in the first count, referred to to avoid unnecessary repetition, in our opinion is sanctioned by the decision of this court in *Lorenz v. United States*, 24 App. D. C., 363. See *Blitz v. United States*, 153 U. S., 308, 316; *Crain v. United States*, 162 U. S., 625. In the case last cited the first count set out in full a declaration for an invalid pension and an affidavit thereto, and in the second count it was alleged that said declaration and affidavit are in words and figures, as set out in the first count, whereupon the court said: "One of the objections made to the second count was that it was incomplete, and referred in an uncertain, indefinite manner to documents set forth in the first count. The reference to the declaration and affidavit set forth in the first count indicated the documents that were intended to be incorporated, by reference, into the second count; and this reference was not affected by the fact that the first count was defective, or by the fact that judgment upon that count was arrested. One count may refer to matter in a previous count so as to avoid unnecessary repetition; and if the previous count be defective or is rejected, that circumstance will not vitiate the remaining counts, if the reference be sufficiently full to incorporate the matter going before with that in the count in which the reference is made." *Crain v. United States*, supra, 633. Mr. Bishop says the reference must be so full and distinct as in effect to incorporate the matter going before with that in the count wherein it is made. *Bishop New Crim. Proc.*, sec. 431. This feature will be more fully considered in the discussion

of an indictment against Benson and Hyde for conspiracy.

The fourth count by way of inducement repeats the description of the business, and of the false and fraudulent practices of Benson and Hyde in the identical language of the first count, except that they are alleged to have been engaged in the said business on January 1, 1901, "and from thence hitherto." The allegations in this count concerning an investigation by the Secretary of the Interior is not materially varied from the first count. It is alleged that Harlan was a clerk regularly employed in the said General Land Office and so having access to the records of the special service division thereof, was in a position to ascertain and know the contents of special agents' reports, and it is thus alleged his duty arose to preserve and keep for the exclusive consideration of the proper officers of said department and of the General Land Office all information which might come to his knowledge by reason of his office pertaining to special agents' reports in regard to said investigation. Finally it alleges that defendant paid Harlan on March 15, 1903, in this District, \$200, with allegations of intent identical with the allegations of intent in the first count.

The fifth count alleges that under the circumstances and conditions set forth in the fourth count, while knowing the premises, said Benson, on March 15, 1903, gave said Harlan \$200. The allegations of intent are the same as in the fourth count.

The sixth count is identical with the fifth, except that it alleges the payment by Benson to Harlan of \$100 on March 25, 1903.

The seventh count is identical with the fourth count, except that it includes one Burns as a third special agent, by whom the investigation was begun under the secretary's order, and it alleges the payment by Benson to Harlan of \$200 of December 18, 1903.

The eighth count is identical with the seventh count, except that there is the additional allegation that the report of the special agents was made and transmitted to the Secretary of the Interior on November 17, 1903, and except that this count charges bribery of William E. Valk, alleged to have been a clerk in the General Land Office. The allegations concerning his employment and duty are identical with the allegations concerning Harlan's in the fourth count, and it is alleged that Benson paid Valk \$100 on December 18, 1903.

We have discussed the assignments of error as if applying only to the first count for convenience and clearness. In our opinion the considerations which lead us to hold the first count good apply to the other counts we have thus summarized already upon the assignments of error we have discussed, and for the reasons stated we concur with the court below so far as we have proceeded.

Third. The seventh assignment of error is that the indictment improperly joins several different and independent alleged offenses to the prejudice of the defendant. Section 1024, Revised Statutes, says that when there are several charges against any person for two or more acts or transactions connected together, or for two or more acts or transactions of the same

class of crimes or offenses which may be properly joined, the whole may be joined in one indictment in separate counts. The Supreme Court has repeatedly sanctioned the joinder of offenses where the different acts or transactions were not so clearly of the same class of offenses as are those joined in the different counts of this indictment. The offense charged in each count is the same. The offer of money is alleged in the first seven counts to have been made by the defendant to the same person, Harlan, in the same official relation, to induce the same violation of official duty in respect of the same special agents' report in the same pending investigation of alleged public land frauds. In the eighth count the only variation is that the defendant is alleged to have given money to Valk, a clerk in the same land office under like conditions and official relation with those of Harlan in the other counts. The question is so well settled that we need not further discuss it.

"The accused having been charged with different acts or transactions 'of the same class of crimes or offenses,' it is scarcely necessary to say that the transactions referred to in the indictments, being of the same class of crimes, could properly, that is, consistently with the essential principles of criminal law, be joined in one indictment against a single defendant, without embarrassing him or confounding him in his defense (*Pointer v. United States*, 151 U. S., 396, 400)."

The eighth and ninth assignments of error urge that the indictment is bad because it does not properly notify the defendant of the charge made against him to enable him to prepare his defense or to plead an acquittal or conviction in bar, and because the charges made therein are so prolix, involved, confused, and uncertain, that the jury could not understand them.

We have examined the indictment with great care and are convinced that it is sufficiently clear and certain to fully apprise the defendant, that it contains every element of the offense intended to be charged and shows with accuracy that he could plead a former acquittal or conviction. We do not doubt that an average jury is capable of understanding it quite as well as justice to the defendant requires.

The tenth and last assignment of error says that all the counts subsequent to the first are bad because they do not contain sufficient words of reference to incorporate in them the material averment of the first count. We have considered this objection in connection with the second count and for the reasons then stated we hold upon the authority of *Lorenz v. United States*, supra, 363, that the remaining counts are also good.

Fourth. The defendant's counsel placed most reliance upon the proposition that neither Harlan nor Valk was forbidden by any lawful duty to reveal to Benson the contents of the special agents' report, if either should ever happen to be in a position to do so. They argued that the indictment contains no allegation of fact saying that to reveal the contents of the report would be a violation of duty by either of them and that section 5451 contemplates only a payment to induce a violation of some duty prescribed by law, and that there is no allegation of any statute, rule, regulation,

or order making it the duty of clerks in the Land Office to maintain secrecy in respect of special reports or making such reports confidential, and if there were such rule, regulation, or order, promulgated by the Secretary or the Commissioner, the same could not be the basis of a criminal prosecution; that, at most, the indictment shows no more than that if the report should be made and filed in the Land Office, Harlan and Valk might have had access thereto, and it is said this is no sufficient foundation for a charge of bribery under the statute.

If the term lawful duty mean only a duty imposed by law, such narrow construction of this statute might cause great doubt, for this indictment appears to admit that neither of these officials were prohibited by a statute from revealing the contents of such reports. Despite the elaborate and ingenious argument of defendant's counsel, we still hold, as this court has heretofore held, that every incidental yet necessary duty incumbent upon an official to perform need not be designated by statute.

In our opinion the Secretary of the Interior could prescribe regulations of his office and of its bureaus, and for the custody of papers and reports in investigations, and a breach of such regulations would be an act in violation of the lawful duty of the officials named and described in this indictment.

In a case not unlike that we are here considering this court applied the statements of the Supreme Court describing lawful official duty:

"A practical knowledge of the action of any one of the great departments of the Government must convince every person that the head of a department, in the distribution of its duties and responsibilities, is often compelled to exercise his discretion. He is limited in the exercise of his powers by the law, but it does not follow that he must show a *statutory provision* for everything he does. No Government could be administered on such principles. To attempt to regulate by law the minute movements of every part of the complicated machinery of Government would evince a most unpardonable ignorance on the subject. Whilst the great outlines of its movements may be marked out, and limitations imposed on the exercise of its powers, there are numberless things which must be done that can neither be anticipated nor defined, and which are essential to the proper action of the Government. Hence, of necessity, usages have been established in every department of the Government which have become a kind of common law, and regulate the rights and duties of those who act within their respective limits." *United States v. McDaniel*, 7 Peters, 1, 13; *Tyner et al. v. United States*, 23 App. D. C., 356; 32 Wash. Law Rep., 258.

It is true the allegation of duty is of no avail unless the facts necessary to raise it are clearly stated, and a simple averment of a duty without a statement of facts from which such duty arises is a mere conclusion of law. The skillful analysis of the allegations of duty and the allegations pertaining thereto in this indictment by the defendant's counsel fail to suggest any allegation to support the duty alleged, falling short of a statute prohibiting the clerks in the

departments from exhibiting official papers. As was said in *Stokes v. United States*, 157 U. S., 187, 191: "Indeed, it is difficult to see, nor do the defendants suggest, what other allegations were necessary to define the offense with greater clearness or certainty, and it is impossible that they could have been misled as to the nature of the charge against them." *Evans v. United States*, 153 U. S., 584. We appreciate that regulations of the heads of departments under authority granted by Congress do not make a thing required by such regulations a thing so required by law as to make the neglect to do the thing a criminal offense in an official where a statute does not distinctly make the neglect in question a criminal offense. Harlan, if all the things alleged in this indictment, whereon his duty is predicated in this indictment, would not, if he had committed a breach of such duty, have been guilty of a crime. The same department regulations, however, under authority from Congress, may be regulations prescribed by law so as lawfully to support acts done under them, and may require acts to be done in accordance with them and thus have in a proper sense the force of law so as in this instance to impose upon Harlan a lawful official duty. See *Caha v. United States*, 152 U. S., 220.

The added force of custom and usage in the Interior Department and in one of its subordinate bureaus, the General Land Office, are not to be wholly disregarded, while the rules and regulations of the Interior Department, including the General Land Office, are matters of which courts of the United States take judicial notice. See *Caha v. United States*, supra, 221, etc.

"Duties imposed by law or regulation promulgated thereunder, and not inconsistent therewith, require no proof. Additional duties that may have been imposed from time to time by order or direction in the ordinary course of administration of the business of the department, must be proved like other facts. But the direct allegation of the fact in the indictment is all that is required; it is not necessary to set forth the evidence or to negative any theory of the defense. *Stokes v. United States*, 157 U. S., 187, 191; *Evans v. United States*, 153 U. S., 584, 594."

By section 161 of the Revised Statutes the head of each department is authorized "to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of records, papers, and property appertaining to it." *United States v. Eaton*, 144 U. S., 677, 686.

We are of opinion that defendant's counsel subject the allegations in this indictment upon which the allegation of Harlan's duty depend to hypercriticism. In construing the substantial requirements of indictments the rule is, says Chitty, "that where a matter is capable of different meanings that will be taken by the court, which will support the proceedings, not that which would defeat them." And the language is to be properly "construed in that sense in which the party framing the charge must be understood to have used it, if he intended his



accusation to be consistent." Such is the rule for all writings, namely, the court leans to the interpretation which will make them effectual, avoiding what would render them null. 1st Bishop New Crim. Proc., sec. 510.

We are of opinion that the allegations of the investigation ordered, for the objects described, the carrying on of the investigation by the special agents under instructions for transmission of information and reports, with directions for keeping the same secret, and the allegation of the functions of Harlan as chief of the special service division in the Land Office, coupled with the fact that it was the alleged fraudulent practice of Benson and Hyde which was the subject of the investigation then pending, and other related allegations, supply a sufficient basis for the allegation that it became and was the duty of said Harlan to keep the information and reports relating to the pending investigation secret, and not to allow the same to be given to or obtained by persons charged with such violations of law, especially not to Benson and Hyde, whose fraudulent practice was then the subject of the pending investigation.

We hold the same opinion respecting the counts describing Harlan and Valk, respectively, as clerks in the General Land Office.

For the reasons we have assigned the interlocutory judgment of the court below overruling the demurrer and requiring the defendant to plead must be affirmed and the cause remanded for further proceedings according to law; and it is so ordered.

**Affirmed.**

**JOHN R. GUERIN, APPELLANT,**

**v.**

**HENRY B. F. MACFARLAND ET AL.**

**INJUNCTION; OBSTRUCTION IN PARKING; POWER OF COMMISSIONERS OF DISTRICT TO MAINTAIN SUIT TO ENJOIN.**

1. The Commissioners of the District of Columbia, in virtue of the power of control and regulation of the streets and parking of this city, may maintain a suit in equity to enjoin the maintenance of a show window projecting beyond the building line and upon the parking, erected by defendant in violation of the terms of a permit authorizing the making of certain repairs to the building.
2. A decree enjoining the maintenance and use of such show window affirmed.

No. 1643. Decided May 1, 1906.

**APPEAL** by defendant from a decree of the Supreme Court of the District of Columbia, in Equity. No. 25,682, in a suit for an injunction. **Affirmed.**

*Mr. W. J. Lambert* and *Mr. John Ridout* for the appellant.

*Mr. E. H. Thomas* for the appellee.

*Mr. Chief Justice SHEPARD* delivered the opinion of the Court:

This is an appeal from an order enjoining the maintenance and use of a projection of a show window over the building line of East Capitol street in the city of Washington.

The bill of the appellees, in their official capacity as Commissioners of the District, alleged the following facts: That on March 15, 1905, the appellant, as owner of a certain frame building

on East Capitol street, made application to the inspector of buildings for a permit to make repairs on the same, which repairs were represented as consisting of replacing weather boarding, window frames, and sash, and wooden cornice. That the permit was issued for the purposes designated, subject expressly to the provisions of the building regulations; and contained express limitations in the following words: "No enlargement, no increase in projection of cornice." That defendant, instead of observing the terms of his application and the conditions of the permit issued in accordance therewith, proceeded to erect a show window in his said building, 7 feet and 10 inches wide, which, for said entire width, projected beyond the building line, and encroached upon the public parking of the said street to the extent of three feet. That when the inspector examined the work on March 17, 1905, he discovered the unlawful encroachment and at once demanded its removal. That subsequently written notice was given to the defendant to remove said obstruction, because it was in violation of section 19 of the building regulations of the District. That defendant refused to remove the said obstruction, and continues said unlawful encroachment, thereby creating a public nuisance. The prayer was for a rule to show cause why an order should not be granted removing said obstruction, and upon hearing for a decree to that end.

The rule was issued, and in obedience thereto the defendant appeared and entered a demurrer to the bill. This was overruled. The defendant asked no leave to answer the bill, and his appearance and demurrer being deemed equivalent to an answer to the rule, the order for the abatement of the nuisance was passed directing the mandatory injunction to issue upon compliance by the complainants with equity rule 42.

The main contention on behalf of the appellant is that it was error to hold that the Commissioners could maintain the bill in their own names and behalf. This, we think, is fully met by a former decision of this court. *McBride v. Rose*, 13 App. D. C., 575, 579; 27 Wash Law Rep. 402.

That the fee simple title to the street is in the United States does not differentiate this case from that. The control of the streets for the purpose of protecting the same from unlawful encroachments is vested in the Commissioners, whether the fee thereof be in the United States, the District of Columbia, or the owners of lots abutting thereon. The organization of the District of Columbia into a municipal corporation, as pointed out in the recent case of *Walter v. Macfarland* (present term), ante, p. 238, is peculiar. Whether the suit could have been maintained in the name of the District of Columbia, we are not called upon to determine, for the power of control and regulation of the streets and parking, as involved in the case at bar, is expressly conferred upon the Commissioners as the executive officers of the District. There is nothing opposed to this view of their powers in the case of *Walter v. Macfarland*, supra. The power claimed in that case, and denied, was of an essentially different character.

Having elected to demur to the bill, thereby

admitting all the facts alleged therein, and having failed to ask leave to answer when the demurrer was overruled, it is now too late to object that it was treated as his response to the rule to show cause.

The decree, as entered, was right, and must be affirmed with costs. It is so ordered.

Affirmed.

JAMES E. CLEMENTS, APPELLANT,

v.

ALONZO S. MUTERSBAUGH, ADMINISTRATOR.

INTEREST; PRACTICE; INSTRUCTIONS.

1. When interest is allowable the jury is competent to assess it, without the aid of an expert accountant; and the exclusion of such evidence held proper.
2. A request by defendant that both parties have leave to furnish the jury with a written statement of the respective amounts claimed by them. *Held*, a matter within the discretion of the trial court, and its refusal of the request not error.

No. 1800. Decided March 6, 1906.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 46,684, entered upon a verdict in an action of assumpsit. Affirmed.

Mr. Leonard J. Mather for the appellant.

Mr. C. E. Emig for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

The appellee, as plaintiff below, brought an action of assumpsit against James E. Clements to recover the sum of \$582.50. The defendant pleaded the general issue. The trial resulted in a verdict for the plaintiff for \$97.33, from the judgment entered on which this appeal has been prosecuted.

The plaintiff's evidence tended to show that the defendant had conducted a public sale for him, in Alexandria County, Virginia, of certain chattels and effects in November, 1898, realizing therefrom the gross sum of \$514.92, upon which defendant was entitled to a credit of \$60. Defendant offered evidence tending to show that he was entitled to certain credits, first on account of the failure of certain purchasers to pay their notes amounting in the aggregate to \$118.82, second, on account of commission claimed as ten per cent of sales, and third, on account of payments of cash alleged to have been made in small sums from time to time between December 3, 1898, and August 6, 1903, amounting to \$328.

On the trial the defendant offered an expert accountant to show the amount of interest to which he was entitled upon the payments testified to by him and excepted to its exclusion.

There was no error in excluding this evidence.

The jury were competent to assess interest, if any was allowable, without the aid of an expert accountant. Nor does it appear that they were not permitted to do so. The defendant does not complain of the refusal of any instruction to that effect, and, the record being silent, it is to be presumed that they were permitted to make all proper allowances of interest in arriving at the balance found to be due.

The second error assigned is on an exception

of the defendant which shows that before the jury retired, defendant "asked leave for both parties to put a statement or memorandum in their hands to show the respective amounts proved or claimed by them, as the absence of such a guide necessitated the jury guessing as to the various amounts properly due from one to the other of the parties litigant," which request the court refused. The fears of the defendant on this point were not entertained by the court to whose discretion the matter was necessarily submitted.

The last error is founded upon an exception taken to a part of the charge in which the jury were told "that if they believed from the evidence that the defendant had intentionally and negligently failed to collect the unpaid and uncollected notes, for which he was claiming credit, that they should disallow said credit to him." We perceive no reversible error in this instruction. In the first place, it does not appear from the verdict returned whether the jury allowed or rejected the credit of said notes, or any part of them. The plaintiff claimed \$514.92, and admitted a credit of \$60 only. The defendant's credits claimed, as set out in the bill of exceptions, amounted to about \$503.31. Of the items making up this, the uncollected notes amounted to \$118.82. The verdict was for \$97.93 as the balance due the plaintiff.

Moreover, a more serious difficulty is this: The bill of exceptions does not purport to recite the evidence of the contract between the parties relating to the sale of the effects and the obligation of defendant in respect thereof; nor does it recite that it contains all of the evidence submitted to the jury. The presumption is, therefore, that there was evidence to which the charge correctly applied.

For the reasons given, the judgment will be affirmed, with costs.

Affirmed.

Failure of the employees operating a car and engine by which a trespasser on the railway track is struck and injured without fault of the employees, to take charge of the wounded man and give him care and attention, is held, in *Union P. R. Co. v. Caplier* (Kan.), 69 L. R. A., 513, not to be a violation of a legal duty for which the company is liable.

The duty to sound warnings when trains approach a trestle over a highway is held, in *Louisville & N. R. R. Co. v. Sawyer* (Tenn.), 69 L. R. A., 662, to depend upon the dangerous character of the place, which is a question for the determination of the jury.

Permission to use a stairway erected on the outside of a building for ingress and egress to and from the second story of another building, in consideration that the owners of the latter building will permit the owner of the other one to erect a porch on a 5-foot strip of a vacant lot adjoining the back end of his building, is held, in *Howes v. Barmon* (Idaho), 69 L. R. A., 568, not to amount to the grant of an easement, but to constitute a license only, revocable by the licensor.

# Supreme Court of the District of Columbia.

THE UNITED STATES, EX REL. THOMAS  
E. SMITHSON,

v.

SNOWDEN ASHFORD AND THE COMMIS-  
SIONERS OF THE DISTRICT OF  
COLUMBIA.

## BUILDING REGULATIONS; PARTY WALLS; MANDAMUS.

On a petition for a writ of mandamus to compel the inspector of buildings and the Commissioners of the District to issue to the relator a permit for the erection of a row of buildings, which permit had been denied because, while section 57 of the building regulations require all party walls to be not less than 13 inches in thickness, the plans presented by relator called for party walls only 9 inches in thickness above the basement floor, *held* that the building regulation in question was not so unreasonable or unnecessary as to be void, and therefore the petition for the writ of mandamus must be denied.

No. 43,303. Law. Decided June 8, 1906.

HEARING on a petition for a writ of mandamus. Denied.

*Mr. B. F. Leighton* for the petitioners.

*Mr. E. H. Thomas* for the respondents.

*Mr. Justice BARNARD* delivered the opinion of the Court:

In this case the relator has presented a petition praying for a writ of mandamus to compel the respondents, the inspector of buildings and the Commissioners of this District, to issue to him a permit to build a row of six dwelling houses, to be numbered 232 to 242, on Thirteenth street Northeast, in square 1010, in Washington City.

The plans presented by the relator indicate that these houses are to be 15 feet each in width, and two stories and basement in height.

The outside walls and party walls in the basement are to be 13 inches in thickness, but from the first-floor joists all the walls are to be only 9 inches in thickness.

A building regulation made by the Commissioners on May 9, 1903, provides that "no party wall shall be constructed in the District of Columbia of less thickness throughout than a brick and a half, or 13 inches." This provision is found in section 57 of the building regulations as amended.

Because of the relator's intention to disregard this regulation as to thickness of party walls, and to build this row of houses with 9-inch party walls above the basement, a permit was refused by the building inspector.

The relator thereupon appealed to the Commissioners, and they affirmed the action of the inspector.

He then filed his petition in this court, and in response to a rule to show cause, the respondents filed an answer, on which the relator joined issue, and proof was taken as to the character, advisability, safety, and durability of 9-inch party walls as compared with 13-inch party walls in small two-story houses such as described in the plans in this case.

From this testimony it appears that houses such as these have been constructed in the city of Washington for many years, and up to the time that the said building regulation was so amended as to require all party walls to be 13

inches, and many such houses are still standing. Before that time, however, some very reputable builders, in building for themselves, thought it advisable and preferable to build such party walls 13 inches in width, and did so build a number of houses.

There seems to be a difference of opinion among the builders whose testimony was taken as to the necessity of having 13-inch walls; and there is also a difference of opinion as to the best method of construction of a 9-inch wall, with reference to the placing of the joists. Some contend that it is better construction to place the joists of the two houses, the ends of which are to rest upon the party wall, directly opposite each other, and others claim that it is better construction to "stagger" them, as it is called; that is, to place the joists in one house midway between the joists of the other house, so they will not come directly opposite each other. Whichever way the joists are laid the wall is much weakened by the holes left to accommodate the joists.

Some of the witnesses also maintain that a 9-inch wall is not a sufficient protection against fire in an adjoining building; and that both for safety as to construction and safety as against fire that the regulation is necessary.

It seems to me that the question is not whether a 9-inch party wall is reasonably strong and safe, but whether a 13-inch party wall is so much stronger and safer than is necessary as to make the regulation an unreasonable interference with the rights of citizens in the use of their own property? All agree, if properly built, it is a better wall, but all do not agree that a 9-inch wall is sufficient.

The regulation is clearly one pertaining to the character of the buildings to be erected in the District, and, therefore, if it is not an unreasonable requirement, the court would be without power to interfere, as the Commissioners are the ones entrusted with the duty of making building regulations, and not the court. 20 St. L., 131.

While builders are so divided in opinion as to the necessity of a 13-inch party wall in all classes of houses, and as to the sufficiency of a 9-inch party wall, it is difficult for the court to say that a regulation requiring a 13-inch party wall must, of necessity, be an unreasonable regulation. All reasonable and practical men do not so regard it.

Counsel have presented a number of building regulations from other cities in this country, from all of which it appears that similar walls are required by them. In the face of these, and under the testimony in this case, I am not able to conclude that the building regulation in question is so far unreasonable or unnecessary as to be void. I am therefore forced to the conclusion that the petition of the relator herein must be dismissed and the writ of mandamus denied.

The failure of a railroad, while approaching a highway crossing, to give the signals required by statute, does not excuse one approaching the track, with a view to crossing it, from exercising ordinary care in so doing. *New York, O. & St. L. R. Co. v. Robbins* (Ind. App.), 76 N. E. Rep., 804.

**Mechanic's Lien—Contractor.**

In a case lately decided by the Minnesota Supreme Court (*Berger v. Turnblad et al.*), the evidence showed that the defendant, who was erecting a house on certain lots owned by him, made an agreement with a contractor to furnish all the material and labor for the plain and ornamental plastering therein. The contractor employed the plaintiff to do a certain part of the work on the ornamental plastering, the major portion of which was done at the shop of contractor, in making necessary designs, models, and casts, which were exclusively intended for and adapted to the construction of the ornamental plastering, and of no value except for such purpose. The defendant and his contractor adopted the shop as the place for the doing of the preliminary work of constructing the ornamental plastering for the house, instead of the premises where the house was being erected. After the plaintiff had completed his work a controversy arose between the defendant and the contractor as to their respective rights under the contract, and the contractor refused to permit any of the product of plaintiff's labor to be placed in the house, and it never was delivered upon the defendant's lots and did not become a part of his house. The court held that the plaintiff was entitled to a lien on the house and lots for the value of all of his labor.

**Street Railway—Collision—Negligence.**

A traveler driving lengthwise along a street railroad track to pass an obstruction in the street is not under an obligation to look and listen constantly for cars coming up behind him, according to the decision of the Supreme Court of Indiana in the case of *The Indianapolis Street Railway Company v. Marschke*. In this case the evidence showed that the plaintiff, driving down the approach leading from a viaduct, overtook a heavy wagon going slowly in the same direction, looked behind, and, seeing no street car approaching, turned upon the car track and drove forward at a slow trot until her buggy was struck from behind by a car, which had come up over the viaduct after she looked, and ran upon her at the rate of twenty miles an hour without sounding a gong. The court held that, under the circumstances, a finding by the jury that the plaintiff was not guilty of contributory negligence should not be disturbed on appeal, and that the defendant was properly held liable if it negligently ran a car against the plaintiff's buggy and injured her, even if all the specific acts charged in the complaints were not fully proved.

A trespass committed upon a guest in a hotel by servant of the proprietor, whether actively engaged in the discharge of his duties at the time or not, is held, in *Clancy v. Barker* (Neb.), 69 L. R. A., 642, to be a breach of the implied undertaking that the guest shall be treated with due consideration for his comfort and safety, for which the proprietor is liable in damages. A note to this case reviews the other authorities on liability of innkeeper for injury to guest by servant.

The right to recover punitive damages for the cutting of trees upon a sidewalk for the accommodation of electric light wires, in entire disregard of the rights of the abutting owner, and against his protest, is sustained in *Brown v. Asheville Electric Co.* (N. C.), 69 L. R. A., 631.

A father paying full fare is held, in *Whitney v. Pere Marquette R. Co.* (Mich.), 1 L. R. A. (N. S.), 352, to be entitled to recover for loss of articles of his infant child, packed and carried with his baggage, although the child paid no fare.

That an innkeeper is not liable for an injury inflicted upon a guest in his hotel by a servant who was not at the time of the injury acting within the apparent or actual scope of his employment is declared in *Clancy v. Barker* (O. C. App., 8th C.), 69 L. R. A., 653.

The general rule requiring a party seeking to rescind a contract for non-performance by the other to restore or tender back what has been received from the latter, is held, in *Timmerman v. Stanley* (Ga.), 1 L. R. A. (N. S.), 379, not to apply where one party agreed to teach another a certain thing, and, after beginning the course of instruction, refused to proceed further.

A bank purchasing a draft with bill of lading attached, making goods deliverable to order of consignor, is held, in *Haas v. Citizens' Bank* (Ala.), 1 L. R. A. (N. S.), 242, to have assumed the obligation of the seller to deliver the property, according to the contract, to the drawee of the draft.

A purchaser of an interest-bearing certificate of deposit payable to and indorsed by one as "trustee" is held, in *Ford v. Brown* (Tenn.), 1 L. R. A. (N. S.), 188, under the uniform negotiable instrument law, to be prima facie and presumptively charged with actual knowledge of the trustee's want of authority to dispose of the paper for his own benefit.

An adjudication of bankruptcy upon a petition alleging that the debtor had made an unlawful preference to a firm, is held in *Silvey v. Tift* (Ga.), 1 L. R. A. (N. S.), 386, not to estop the firm, in a subsequent suit by the trustee in bankruptcy, to show that, prior to the bankruptcy proceedings, they sold certain goods to the bankrupt relying on representations made by him, and, upon discovering that they were false, rescinded the sale and retook their goods.

**RULE OF COURT.**

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

## Legal Notices.

## FIRST INSERTION.

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, who were heretofore by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Margaret Edes, late of the city of Washington, D. C., deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Thursday, the 12th day of July, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment of all creditors of the said estate, under the court's direction and control, when and where all creditors are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 13th day of June, 1906. THOS. HYDE, J. HUBLEY ASHTON, HENRY H. FLATHER, Executors of Margaret Edes, deceased. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,883. Administration. [Seal.] 24-4t

## Crandall Mackey, Solicitor

In the Supreme Court of the District of Columbia.  
John W. Beha, Complainant, v. Harriet V. Beha,  
Defendant. Equity No. 25,637.

The object of this suit is to declare the marriage of John W. Beha, the complainant, and Harriet V. Beha, the defendant, null and void ab initio because of the former marriage of Harriet V. Beha to one Edward Everly Slough, who was at the time of the marriage of complainant to defendant alive and never divorced from the defendant and is still her lawful husband. On motion of the complainant, it is, this 11th day of June, A. D. 1906, ordered that the defendant, Harriet V. Beha, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three consecutive weeks in Washington Law Reporter and The Washington Post. (Signed) WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 24-3t

## H. H. Glassie, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of James O'Connell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 14th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of June, 1906. R. WOODLAND GATES, 314 Munsey Bldg. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,715. Administration. [Seal.] 24-3t

## William Stone Abert, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

## Estate of Walter Wardell, Deceased.

No. 13,725. Administration Docket —.

Application having been made herein for letters of administration on said estate, by Henry Wardell, and that said letters issue to William Stone Abert, it is ordered this 13th day of June, A. D. 1906, that John Wardell, Herbert Wardell, Ida Wardell, Walter Wardell, Mary Wardell, Alice Gardner Bell, Geraldine B. Pohlman, Oo'la Ita Brown, and Edna Schafer, and all others concerned, to appear in said court on Thursday, the 19th day of July, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 24-3t

[Seal]  
Justice blanks of every description for sale at this office.

## Legal Notices.

Irwin B. Linton, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Virginia C. Molloy, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 7th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of June, 1906. WM. H. SAUNDERS, 1407 F. St. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,657. Administration. [Seal.] 24-3t

## Charles W. Clagett, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Eliza S. Wood, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 14th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of June, 1906. T. VAN CLAGETT, 514 F. St. N. W., Washington, D. C. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,743. Administration. [Seal.] 24-3t

## Lyon &amp; Lyon, Attorneys

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Thomas A. Brown, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 14th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 14th day of June, 1906. THOMAS A. BROWN, JR., 1417 F. St., N. W.; WALTER A. BROWN, 1428 Pa. ave., N. W. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,742. Administration. [Seal.] 24-3t

## E. Ross Perry &amp; Son, Solicitors

In the Supreme Court of the District of Columbia,  
Holding a Special Term as an Equity Court.  
Bessie Juliet Kibbey, Complainant, v. Frederick B. McGuire, Trustee, et al., Defendants.  
No. 25,287. Equity Doc. No. 58.

The object of this suit is the judicial sale of the following premises situate in the city of Washington, District of Columbia, to wit: All of lot numbered ten (10), in Susan Ireland and others' subdivision of lots in square numbered two hundred and eighty-five (285), as per plat recorded in Liber B, folio 104, of the records of the surveyor of the District of Columbia, and also the west six (6) feet front of lot numbered nine (9) in the said subdivision, by the full depth of said lot numbered nine (9), or at least so much of said front by said depth as is covered by premises numbered 1221 I street northwest, in the said city of Washington, and also the investment of the proceeds of such sale as by law provided. The proceeding is based upon section 100 of the Code of Law for said District. On motion of the complainant it is, this 12th day of June, A. D. 1906, ordered that the defendants, William B. Kibbey, William Beckford Kibbey, Jr., R. Carroll Kibbey, Hiscose A. Kibbey, Harold S. Kibbey, Gerald S. Kibbey, Gladys G. Kibbey, John D. Kibbey, Helen Kibbey Bruce, Rinker Kibbey, and Egerton W. Kibbey, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and the Evening Star once a week for three successive weeks prior to said return day. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 24-3t

**Legal Notices.**

**George C. Shinn, Attorney**  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.

In the Matter of the Estate of Mary J. Allyn.  
No. 13,888. Adm. Doc. 35.

Application having been made herein for probate of the last will and testament and the codicil thereto of said deceased, and for letters testamentary on said estate by Alice B. Keefe, it is ordered, this 7th day of June, A. D. 1906, that Frank Burritt, of Chicago, State of Illinois, and Harry Rayner Burritt, of Goldfield, State of Nevada, and the unknown heirs at law and next of kin of said deceased, if any there be, and all others concerned, appear in said court on Friday, the 20th day of July, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. That notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three (3) successive weeks before the return day herein mentioned, the first publication to be not less than thirty (30)

[Seal] days before the return day. WENDELL P. STAFFORD, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 24-St

**George E. Fleming, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Daniel B. Clarke, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 11th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 11th day of June, 1906. ALEXANDER PORTER MORSE, 1506 Pa. ave.; DANIEL B. CLARKE WAGGAMAN, 814 19th st. N. W.; UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA, by George E. Fleming, Secretary. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,726. Administration. [Seal.] 24-St

**Leon Tobriner, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia and the State of New York respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Reuben Harris, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 8th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 8th day of June, 1906. HATTIE HARRIS, 1532 16th st. N. W.; ABRAHAM D. PRINCE, 7th and D sts.; LEON H. REIZENSTEIN, 114 E. 14th st. New York; PHILIP KING, Kings Palace. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,721. Administration. [Seal.] 24-St

**James F. Hood, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Mary E. Hood, Deceased.  
No. 13,997. Administration Docket —.  
Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by James F. Hood and Everett J. Dallas, who are therein named as executors, it is ordered this 8th day of June, A. D. 1906, that Frank M. Boggs, William H. Randall, Elizabeth Andrews, Florence H. Boggs, William A. Tully, John Tully, Benjamin Shopp, William B. Foster, Letitia Cook, Charles H. Foster, John F. Foster, George M. Foster, Kate S. Strimble, and Harriet E. Odell, and all others concerned, appear in said court on Monday, the 16th day of July, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 24-St

**Legal Notices.**

**Hamilton & Colbert, George E. Fleming, and Walter H. Marlow, Jr., Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Henry Kraak, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers on or before the 25th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 11th day of June, 1906. HENRY C. KRAAK, Lincoln Flats, 111 12th st. S. E.; UNION TRUST COMPANY, by George E. Fleming, Secretary. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,580. Administration. [Seal.] 24-St

**Sullivan & Toomey, Attorneys**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Owen Woods, Deceased.  
No. 13,702. Administration Docket —.  
Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Frank X. McKenny and Henry J. McDermott, it is ordered this 15th day of June, A. D. 1906, that Charles A. Woods appear in said court, on Monday, the 16th day of July, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL P. STAFFORD, Justice. [Seal] Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 24-St

**Berry & Minor, Solicitors**  
In the Supreme Court of the District of Columbia.  
George W. Ewing et al. v. Jesse Holladay et al.  
Equity No. 28,240.

The object of this suit is to make partition by sale of square numbered eight hundred and sixty-two (862), in the city of Washington, District of Columbia, to divide the proceeds thereof among the parties entitled, and to appoint a trustee therefor. On motion of the complainants, by their solicitors, Berry & Minor, it is, this 11th day of June, A. D. 1906, ordered that the respondents, Jesse M. Philbin, Eugene A. Philbin, Hattie E. Tyler, Duval Tyler, Daisy B. Holladay, Benjamin Holladay, Lena Holladay, Louis W. Holladay, Folly Holladay, and Adele Holladay, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star newspaper before said fortieth day. By the Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Fred. C. O'Connell, Asst. Clerk. 24-St

**Alfred B. Leet, Solicitor**  
In the Supreme Court of the District of Columbia.  
John L. Edwards, Complainant, v. Annie A. Ringwalt et al., Defendants.  
No. 28,282. Equity Doc. —.

The object of this suit is to partition by sale the following described real estate in the city of Washington, District of Columbia, to wit, part of original lots numbered 10 and 11 in square 122, belonging to the estate of John L. Edwards, deceased, and to distribute the proceeds to heirs at law, and parties entitled thereto. On motion of the complainant, it is this 12th day of June, A. D. 1906, ordered that the defendants, Annie A. Ringwalt, Frank B. Kennedy, and Kathryn V. Kennedy, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 24-St

**Legal Notices.**

**Alex. H. Bell, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Hermann Dalkier, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 7th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of June, 1906. BARBARA DALKIER, 477 H st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,710. Administration. [Seal.] 24-St

**B. F. Leighton, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Emily S. Ewell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of June, 1906. JOHN L. EWELL, 325 College st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,724. Administration. [Seal.] 24-St

**Irwin B. Linton, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Virginia C. Molloy, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 7th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of June, 1906. WM. H. SAUNDERS, 1407 F st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,657. Administration. [Seal.] 24-St

**R. Ross Perry & Son, Solicitors**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Special Term as an Equity Court.**  
**Bessie Juliet Kibbey, Complainant, v. Frederick B. McGuire, Trustee, et al., Defendants.**

No. 26,237. Equity Doc. No. 58.  
 The object of this suit is the judicial sale of the following premises situate in the city of Washington, District of Columbia, to wit: All of lot numbered ten (10), in Susan Ireland and others' subdivision of lots in square numbered two hundred and eighty-five (285), as per plat recorded in Liber B, folio 104, of the records of the surveyor of the District of Columbia, and also the west six (6) feet front of lot numbered nine (9) in the said subdivision, by the full depth of said lot numbered nine (9), or at least so much of said lot front by said depth as is covered by premises numbered 1221 I street northwest, in the said city of Washington, and also the investment of the proceeds of such sale as by law provided. The proceeding is based upon section 100 of the Code of Law for said District. On motion of the complainant it is, this 12th day of June, A. D. 1906, ordered that the defendants, William B. Kibbey, William Beckford Kibbey, Jr., R. Carroll Kibbey, Blasco A. Kibbey, Harold S. Kibbey, Gerald S. Kibbey, Gladys G. Kibbey, John D. Kibbey, Helen Kibbey Bruce, Rinker Kibbey, and Egerton W. Kibbey, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and the Evening Star once a week for three successive weeks prior to said return day. HARRY M. CLABAUGH, Chief Justice. A true copy.

Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 24-St

**Legal Notices.**

**H. H. Glasco, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of James O'Connell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 14th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of June, 1906. R. WOODLAND GATES, 314 Munsey Bldg. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,715. Administration. [Seal.] 24-St

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscribers, who were heretofore by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Margaret Edes, late of the city of Washington, D. C., deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Thursday, the 12th day of July, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment of all creditors of the said estate, under the court's direction and control, when and where all creditors are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 13th day of June, 1906. THOS. HYDE, J. HUBLEY ASHTON, HENRY H. FLATHER, Executors of Margaret Edes, deceased. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,883. Administration. [Seal.] 24-St

**Crandall Mackey, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**John W. Beha, Complainant, v. Harriet V. Beha,**  
**Defendant. Equity No. 25,637.**

The object of this suit is to declare the marriage of John W. Beha, the complainant, and Harriet V. Beha, the defendant, null and void ab initio because of the former marriage of Harriet V. Beha to one Edward Everly Stough, who was at the time of the marriage of complainant to defendant alive and never divorced from the defendant and is still her lawful husband. On motion of the complainant, it is, this 11th day of June, A. D. 1906, ordered that the defendant, Harriet V. Beha, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three consecutive weeks in Washington Law Reporter and The Washington Post. (Signed) WENDELL F. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 24-St

**William Stone Abert, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Walter Wardell, Deceased.**

No. 13,725. Administration Docket —

Application having been made herein for letters of administration on said estate, by Henry Wardell, and that said letters issue to William Stone Abert, it is ordered this 13th day of June, A. D. 1906, that John Wardell, Herbert Wardell, Ida Wardell, Walter Wardell, Mary Wardell, Alice Gardner Bell, Geraldine B. Pohlman, Oo'ls Ita Brown, and Edna Schafer, and all others concerned, to appear in said court on Thursday, the 19th day of July, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WENDELL F. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 24-St

[Seal] STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 24-St

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W.



# The Washington Law Reporter

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Mr. FREDERICK S. TYLER, who for several years was connected with the Court of Appeals of the District of Columbia, and during the past year associated with Mr. Morgan H. Beach in the practice of law, has severed his connection with Mr. Beach's office, and expects to open an office of his own upon his return to the city in the fall.

### Master and Servant—Obvious Defect in Machine—Assumption of Risk.

In *Andrecsik v. New Jersey Tube Company*, decided June 18, 1906, by the New Jersey Court of Errors and Appeals, it appeared that the plaintiff complained to the superintendent at 10 a. m. that the machine upon which he was working was out of order. The defect was obvious. The superintendent said: "You go right ahead with the work; we are overloaded with work, and noon hour I will fix this for you." The repair was not made at the noon hour; but the plaintiff nevertheless resumed work upon the obviously defective machine, and at 3 o'clock was injured by reason of the defect complained of. It was held that the promise to repair was definite and specific as to time of performance; that there was no question for the jury, and that the plaintiff was properly non-suited. In holding that it does not follow that, whenever it is proved that a promise to repair was made and acted upon, the case is a *prima facie* one for the jury, the court lays down the following

principles of law as applicable to the facts of the case at bar:

(1) The servant assumes not only the ordinary risks incidental to employment, but as well all risks arising and becoming known to him during his service. The master, by promising to amend a defect complained of, as an inducement to the servant to continue, forthwith takes from the servant the risk, and thereafter, and during the period for repair, assumes it. Where the promise is general and indefinite the master's undertaking runs for a reasonable time (approving *Dowd v. Erie R. R. Co.*, 41 Vroom [70 N. J. L.], 451). Where it is to repair at a fixed time, it runs until the termination of the time fixed.

(2) When the agreement to repair is general, i. e., inferential, as to the time of its performance, if the master's promise is not performed within a reasonable time for its fulfillment, and the servant continues to incur the danger in the employment, after the lapse of such reasonable time the servant assumes the risk of injuries occurring thereafter. In such case there may be a question for the jury of reasonable time.

(3) When the agreement to repair is not indefinite, but specific, as to the time of its performance, if the promise is not performed within the time specified for its fulfillment and the servant continues in the employment after a manifest breach of the master's promise to repair, the assumption of risk by the master ceases, and the servant reassumes the risk of subsequent injuries therefrom. Where the time of performance is clearly fixed by the agreement of the parties, there is no question for the jury of a reasonable time for performance.

### Libel—Editor-in-Chief of Newspaper.

In *Folwell v. Miller*, decided May, 1906, by the United States Circuit Court of Appeals for the Second Circuit, the action was to recover for an alleged libel published in the *New York Times*, of which paper the defendant was editor-in-chief, as well as principal stockholder in the corporation owning the newspaper. It was in his capacity as editor-in-chief that he was sought to be held liable for the publication. The trial court directed a verdict for the defendant, and its ruling is affirmed by the Circuit Court of Appeals, which holds that the editor-in-chief of a newspaper having general supervision of the editorial and news departments, who is neither the owner nor publisher, is not liable for a libel published in the newspaper without his knowledge or complicity.

# Court of Appeals of the District of Columbia.

GEORGE T. KNOTT AND CREED M. FULTON, COMMITTEE OF THE PERSON AND ESTATE OF SAID GEORGE T. KNOTT, APPELLANTS,

v.

THOMAS J. GILES.

EQUITY; SPECIFIC PERFORMANCE; ADEQUATE REMEDY AT LAW.

1. The jurisdiction of equity in decreeing specific performance is not compulsory, but the subject of discretion; and it will not be decreed when to do so will work hardship or injustice to either of the parties, unless that result can be obviated by conditions that may be properly imposed.
2. K., owner of certain real estate, contracted to sell the same to complainant, who bought it as a speculation merely, for \$600 an acre, but subsequently refused to convey. About twenty days after the making of the contract proceedings were brought under sec. 115f of the Code, in which K. was adjudged an habitual drunkard and a committee appointed for his estate. Complainant's demand on the committee for a conveyance was refused unless he would pay a large price for the property, which he refused to do. The committee then reported to the court an offer of \$825 per acre for the property, and its acceptance was authorized. To complainant's bill for specific performance defendants filed a plea setting up the mental incapacity of K. The trial court, on testimony taken, held the plea untrue, and entered a decree for specific performance. *Held*, that the case was one of hardship, in which specific performance should not be decreed, and the decree reversed, with directions to dismiss the bill without prejudice to complainant's right to pursue his remedy at law.

No. 1652. Decided June 5, 1906.

APPEAL by defendants from a decree of the Supreme Court of the District of Columbia, in Equity, No. 25,167, in suit for specific performance. Reversed.

*Mr. A. E. L. Leckie, Mr. Creed M. Fulton, and Mr. J. W. Coz* for the appellants.

*Mr. C. C. Tucker and Mr. J. Miller Kenyon* for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This is a suit for specific performance of a contract to convey lands. The bill was filed by Thomas J. Giles, on January 27, 1905, against George T. Knott, Creed M. Fulton, and Eugene R. West, and alleges the following facts:

(1) George T. Knott was on the 11th day of August, 1904, seized and possessed of a tract of land in the District of Columbia, containing 3.625 acres of which a particular description is given.

(2) That on August 11, 1904, the following contract was entered into: "Washington, D. C., August 11, 1904. Received of Thomas J. Giles a deposit of \$100 on purchase of a part of the George T. Knott property on north side of Conduit Road, west of small public school; property described as follows: Beginning at the west line and running eastwardly to the west line of lane leading to house; then in a northerly direction to the back line of the property; then westwardly on the back line to the extreme west line; thence southerly to the point of beginning. Exact area to be determined by official survey, terms all cash. Property to be sold free of incumbrance, taxes paid to date.

Sale to be consummated within thirty days. Title to be of good record or no sale.

THE MILLER SHOEMAKER  
REAL ESTATE Co. (Incorporated),  
By J. BARTON MILLER,

Secretary and Treasurer.  
Accepted by THOMAS J. GILES."

To this is attached the following paper:

"August 11, 1904. I hereby approve of the sale of the Miller Shoemaker Co. of the following portion of my property on the Conduit Road: Beginning at the west line and running eastwardly to the west line of lane leading to the house; then in a northerly direction to the back line of the property; then westwardly on the back line to the extreme west line; thence southerly to the point of beginning. Exact area to be determined by official survey. Price of property \$600 dollars per acre. Sale to be concluded and money paid in 30 days. Property to be free of debt and taxes. Miller Shoemaker Co. to be allowed 5% for selling.

GEORGE T. KNOTT.

Witnesses: J. B. Miller, Annie Davis."

This was acknowledged the same day by George T. Knott before said J. Barton Miller, Notary Public, and was recorded December 9, 1904.

(3) That by the consent and direction of said George T. Knott a survey of the said land was made, showing the area above stated.

Within 30 days of the date of said agreement the complainant notified the defendant that the area of the tract was 3.625 acres, making the consideration \$2,175, which sum he tendered together with a deed to be executed and delivered by him. Defendant refused to receive the said money and to execute the said deed.

That defendant, Creed M. Fulton, was by decree of the Supreme Court of the District of Columbia, on the 15th day of September, 1904, appointed committee of the person and estate of the defendant, George T. Knott, who had been theretofore found to be an habitual drunkard. Reference is made to the proceedings in said equity cause, No. 24,872.

Thereafter complainant demanded of defendant Fulton that he carry out the contract as aforesaid, which the defendant refused to do, and refused to ask the authority of the court to do so unless the complainant would agree to pay more than \$600 an acre for said tract of land.

Thereafter, on the 19th day of January, 1905, the said Fulton obtained an order, in said equity cause, authorizing him as committee of said Knott to sell three acres and a fraction of an acre from the extreme northern portion of the tract of land belonging to said Knott to the defendant Eugene R. West for \$825 per acre. Said Fulton has not yet conveyed said land to the defendant West, and complainant is informed and believes that no part of the purchase price has been paid, save the sum of \$100, claimed to have been deposited on account of the purchase price. Complainant is not advised whether the land authorized to be sold is the same embraced in the aforesaid agreement between complainant and defendant Knott, but avers on information and belief that it is the same property.

That the defendant Fulton had knowledge of said contract between complainant and defendant Knott at the time he obtained said order of January 19, 1905, and that said Eugene R. West also had knowledge.

Complainant avers performance of all the requirements of said agreement on his part, the refusal of defendant to make conveyance, and complainant's readiness to pay the purchase price as agreed upon.

The prayer is for specific performance of the contract hereinbefore set out. The bill was not sworn to. The defendants entered a plea to the bill to the following effect:

That at the time of making the alleged contract set out in the bill of complaint, whereby the complainant charges that the defendant George T. Knott contracted and agreed to sell him land described in the said bill at the price named therein, which price the defendants aver was inadequate and insufficient, the said George T. Knott had no sufficient knowledge or understanding of the contents of said contract and was at that time an habitual drunkard incapable of managing or caring for his property or of executing a valid deed or contract. And the defendants pray the judgment of this court whether they shall or ought to be compelled to make any further or other answer to the said bill of complaint.

On behalf of the defendants, Charles A. Baker testified that he lived on the Conduit Road about one-eighth of a mile from the defendant, George T. Knott, and had known him for eleven years; that he was on the 11th day of August and had been for many months prior thereto satisfied that defendant Knott was thoroughly irresponsible and incapable of transacting his business; that in 1901 he found that defendant was neglecting his business, his place was running down, and from frequent interviews with him witness discovered that he was losing his mentality apparently, and could not carry on any connected conversation; that in almost every instance that he saw Knott he was under the influence of liquor to a very great degree; that he was unable to stand and scarcely able to sit up; that one time he found him lying out near the barn, and upon all these occasions he could get no connected or intelligent replies from him; that condition has continued since 1901; that he has in some respects seemed to be a little better in the last few months, but there is a mental degeneracy which exists and is apparently permanent. Asked to explain what he meant by "mental degeneracy," he said: "Mr. Knott seemed to be wholly incapable of conducting any intelligent or connected discourse; I think that is answer enough." That during the first years of his acquaintance with Knott he gave every evidence of being a pretty intelligent man and managed his business in a business-like manner. He conducted a dairy and truck farm. In August, 1904, his business had run to nothing and no cows were left on the place. On cross-examination he said that he often saw him at his house and frequently met him in the neighborhood; that he was not drunk every time that he met him; that he was drunk about half the time. On three occasions, while not drunk, he was in the condition before described. He could not say that

he had seen him on the 11th or 12th day of August, 1904.

Dr. Henderson Suter testified that he had been a physician for over twenty-five years, had known George T. Knott for twenty years at least, and had been his physician; that in July, 1904, he found him unable to get out of bed, unable to walk or move his legs; did not seem to have any idea what he was about and talked incoherently. His condition was due to the excessive use of stimulants; he had been drinking very hard for years. His trouble was mental degeneracy, alcoholic dementia. He was not at that time capable of making a valid contract or transacting any business. Saw him two or three times in August, but was unable to give exact dates. His mental condition was about the same. Examined him again in September to testify in the proceedings in which the committee was appointed. He said, "I would say that his mental condition was that of alcoholic dementia. He was incapable of conducting any conversation or to understand anything, asked rambling questions, and seemed to have no sense of responsibility whatever." His condition was the same in a general way that it had been in July and August. He had not been able to get but little liquor and had spent the greater part of his time in bed. Have been his family physician for twenty years. Saw him then only occasionally. On cross-examination he said that he attended him twelve or fourteen times in July and also in August; gave him tonics of different kinds. He was in bed and could not get whiskey because his sister would not give it to him. He was suffering from alcoholic paralysis; could not stand on his legs.

Anna M. Davis, the sister of defendant Knott, testified that she lived with him. In July and August his mind was so bad he was out of his head almost all of the time; he sold out his cows and spent every cent of the money; he had one cow left, and would throw sticks to her and think he was feeding her; he talked at random in every way; did not seem to remember anything; mind was so bad that he talked all kinds of talk; did not seem to remember anything, and if I told him anything did not seem to hear. She said that during August, 1904, he would get up out of his bed at night and lie around; he would lie in the stable; would go away; and when witness would miss him would have to get up in the night and hunt for him; would find him in the stable or barns or on the ground, anywhere, and could not persuade him to come in. He said things and did not remember them afterwards, talked nonsense; sat around as if he did not know what he was doing; would go away and come back without seeming to know where he had been. Witness was present when Miller came and obtained Knott's signature to the contract. Only the three were present. There was no conversation between Miller and Knott. Miller wrote it down on a piece of paper and called me, and I called defendant Knott, thinking that Mr. Miller had written down on a piece of paper saying he had been offered \$800 an acre for the ground. I did not understand it, but thought he had an offer for it. Mr. Miller said he had an offer on the place; he did not say how much at first, but wrote it down on a piece

of paper, and I thought he had an offer of \$600 per acre, but was still going on to try to get a thousand dollars if he could. When I had seen him previously I had told him that we wanted a thousand dollars an acre for the land. On the day that he came he said he had an offer of \$600 an acre and said, "Won't you take less for a quick sale?" I told him we wanted \$1,000 an acre. Knott signed the paper when Miller told him to; he did not say a word. I signed it because I thought he was going to try to get a thousand dollars an acre for the ground and that he had an offer of \$600. I did not understand that it was an approval of a sale for \$600. She said that on the next day or the next day after, she heard that he had actually sold the place, and went down to his office and told him that he must not take \$600 an acre, and he then informed her that the property was sold.

Complainant offered testimony as follows:

William C. Duvall testified that he was a constable and had occasion to present a claim to Knott and serve him with process in October, 1903. Had several conversations with him; seemed to be of ordinary intelligence; observed nothing to lead him to believe that he was unable to make a contract.

Isaac E. Shoemaker, of the Miller Shoemaker Company, testified that Mrs. Earnest K. Knott, wife of a nephew of George T. Knott, came to their office and said Mr. Knott wanted them to come up and see him in regard to selling a portion of his property, and the next day sent Mr. Hayes, one of their representatives, to see Knott.

Edgar M. Hayes testifies that he had been employed by the Miller Shoemaker Company in August, 1904, as a salesman, that he went out to Knott's house prior to August 11, 1904; did not see him, but saw Mrs. Davis. She said he was anxious to sell. She said something about having been offered once \$1,000 an acre, and said, "I know we can't get anything like that now." Asked if she would place any price on it, she said: "You can ask \$1,000 an acre and submit any price you can get." She said he was compelled to sell the land, because there was a mortgage on it for about \$1,900. Witness went with Mr. Miller to see Knott on August 11th, but sat in the buggy; did not go into the house.

J. Barton Miller, of the Miller Shoemaker Company, testified that, having heard Hayes' report, he began to look for a purchaser. Thomas J. Giles offered \$600 an acre for so much of the property as was embraced in the part Knott wanted to sell. We drove up to the side of the house and stopped in front of the door. George T. Knott was coming down towards the door from the stable as we drew up, and as I was getting out he took a seat in the doorway and picked up a newspaper and began to read. Mrs. Knott came to the door and invited me to enter the parlor, which was on the second floor. I went in and was met by Mrs. Davis; told her I desired to see Mr. Knott, as I had come to make an offer on the property. Mr. Knott came upstairs; I told him I had not been able to get \$1,000, the price he had been offered once, and the best I could get was \$600, and that was a cash offer. They deliberated over it for some time, talked over the matter,

and discussed the mortgage, and got me to figure up just what the sale would amount to at \$600 per acre. I asked him how much was in there, and he said to the best of his knowledge and belief there were three and a half or four acres, and that the whole tract was about eight acres. They said there was a loan on the property of about \$1,900, and upon making a calculation we found there would be enough money to clear the mortgage and leave the home site free of incumbrance. After recalling that he had once been offered \$1,000 for the property during the boom, I said that was the time to sell, and he said: "Yes, I reckon that we made a mistake," and finally: "If that is all you can get for it I reckon that we had better take it." He showed me where I could write, and taking a form from my pocket I wrote an approval of the sale, which was signed by him. There was some general conversation about Knott desiring to save his home for Mrs. Davis, as she had been his housekeeper, etc. Having reported to him the statement made by Mrs. Davis, he said this is not correct. I told him that I had an offer of \$600 for the property, and if it was acceptable he should approve the sale in writing. They were both in the room, and sometimes I addressed my conversation to Mrs. Davis and sometimes to Mr. Knott. Mr. Knott discussed the situation very thoroughly, showed me the metes and bounds of the property through the window, spoke about the indebtedness on the property, and his being out of business. His conversation was general. Have not seen Knott since. Mrs. Davis came to my office next morning, and she said: "Mr. Miller, that property was sold too cheap, and Mr. Knott wants to recall it." I told her "the property has been sold; we have accepted a deposit on it; the sale has been approved, and the transaction now is closed so far as the approval is concerned. All that remains is for the examination of the title to be made, and the deal finally closed by the passing of the proceeds." Mrs. Davis said: "But we have been advised that it has been sold too cheap." I am uncertain whether she said this on that occasion or on her next visit two or three days later. He observed no peculiarity in Knott on August 11th. He was as rational and intelligent as I have found any man to be. There was nothing in his conduct to indicate that he was not mentally well balanced. I had not seen him for three or four months before that time, and have not seen him since. Know him very well. It appears from the testimony of this witness that the memorandum accepted by Giles was not written until after witness had returned from Knott's to his office.

Giles testifies that he was a speculator in lands, that he wanted the property because he thought it was a great bargain. It appears from the testimony of this witness that the attorneys were employed for him by the Miller Shoemaker Company, and that the entire matter of the litigation was in their hands. He was not in Washington when the bill was filed. The hundred dollars deposited with the Miller Shoemaker Company he supposes was used by them in paying the costs of the proceeding. It does not appear from the testimony of this witness that he ever saw the particular land. He said that he bought it because it was a great bargain,

expecting to make a profit from it, cutting it up a little bit. He said that he considered it worth more than \$600, but would not say how much more he thought it was worth, but that was all he was willing to give for it.

After the close of the testimony, the defendants moved for an extension of time to take further testimony, which motion was overruled, and the court entered a decree to the effect that the plea is untrue, that the plaintiff is entitled to specific performance of the contract, and directing the conveyance to be made upon the payment into court by the plaintiff of the sum of \$2,175, the purchase price of the land. Defendants thereupon took this appeal.

We are unable to perceive why the defendants elected to make their defense by way of the plea rather than by demurrer or answer; nevertheless, the evidence offered in support of the plea is very strong. The bill itself alleges that a decree was entered in the same court on September 15, 1904—a little more than thirty days after the date of the approval of the contract of sale—declaring the defendant Knott an habitual drunkard, and appointing the defendant Fulton the committee of his person and estate. The record shows that the bill on which this decree was entered was filed August 29, 1904; that service was had thereon, and on September 13, 1904, an order was made referring it to a jury to determine "whether or not the defendant is an habitual drunkard, or user of any drug or compound whatsoever, and by reason thereof is unfit to look after and care for himself and estate properly." The jury having returned a verdict that the defendant was an habitual drunkard and unfit to manage or control his property, the decree was entered thereon. The proceedings throughout followed the requirements of section 115f of the Code.

Under the pleadings and proof this decree is conclusive of the condition of the defendant Knott on the date of its rendition; it is not so as of a date prior thereto, but at the same time it has the tendency to raise some inference that the helpless condition must have existed for some space of time, at least, for one can not suddenly become an habitual drunkard and lose all capacity and legal right to control his own property. Affirmative testimony was introduced by the committee tending to show that Knott had drunk excessively for several years, and that prior to July, 1904, as well as in August and September, he was demented. The testimony of his family physician who had known him twenty years was quite positive to that effect.

As the testimony of the physician and another neighbor was general, they not having seen and observed the party on the very day that the contract was made, the learned justice who presided at the hearing apparently giving more weight to the evidence of Miller, the agent who effected the sale, than to the foregoing and that of the sister of Knott, who was also present at the time and taking some part in the transaction, denied the truth of the plea. The defendants having offered the plea of mental incapacity, he evidently regarded them as assuming the same burden of proof that is imposed upon one who seeks to obtain the cancellation of a solemnly executed instrument on

the ground of mental incapacity or fraudulent practices.

In our view of what will be a just disposition of the appeal, having due regard to the equities of all the parties, we will not undertake to determine the sufficiency of the evidence to sustain the plea. Were we to hold it sufficient, the probable effect would be to deprive the complainant of any remedy at law for breach of the contract; and it is in such an action that the question of capacity at the time of making the contract can be most satisfactorily determined by means of a jury trial.

Having found for the complainant on the plea, the court proceeded to enter the decree upon the bill as if the same had been confessed. That this is the proper practice in ordinary cases of bills for equitable relief, there can be no question. *Adrians v. Lyon*, 8 App. D. C., 532, 536; 24 Wash. Law Rep., 488. Taking the bill then as confessed was the complainant entitled to a decree of specific performance? We think not. According to our practice, as declared by the Supreme Court of the United States, "a decree pro confesso is not a decree as of course according to the prayer of the bill, nor merely as the complainant chooses to take it; but that it is made (or should be made) by the court, according to what is proper to be decreed upon the statements of the bill, assumed to be true." *Thomson v. Wooster*, 114 U. S., 104, 113; *Central R. R. Co. v. Central Trust Co.*, 133 U. S., 83, 90. Such a decree "admits the facts charged in the bill, but not the conclusions drawn therefrom, nor the conclusions of law." *Perkins v. Tyrer*, 24 App. D. C., 447, 456, and cases therein cited; 33 Wash. Law Rep., 54.

A bill for specific performance differs from the ordinary bill in equity before referred to. Admitting the facts alleged in such a bill, the conclusion does not necessarily follow that the complainant is entitled to a decree for specific performance as prayed. It is the well-settled doctrine that the jurisdiction of equity is not compulsory, but the subject of discretion. It "does not go as a matter of course, but is granted or withheld according as equity and justice seem to demand in view of all the circumstances of the case." *McCabe v. Matthews*, 155 U. S., 550, 553; *Willard v. Tayloe*, 8 Wall., 557, 565. As explained by Mr. Justice Field in the last named case (p. 567): "The discretion which may be exercised in this class of cases is not an arbitrary or capricious one, depending upon the mere pleasure of the court, but one which is controlled by the established doctrines and settled principles of equity. No positive rule can be laid down by which the action of the court can be determined in all cases. In general it may be said that the specific relief will be granted when it is apparent, from a view of all the circumstances of the particular case, that it will subserve the ends of justice; and that it will be withheld when, from a like view, it appears that it will produce hardship or injustice to either of the parties. It is not sufficient, as shown by the cases cited, to call forth the equitable interposition of the court, that the legal obligations under the contract to do the specific thing desired may be perfect. It must also appear that the specific enforcement will work no hardship or injustice, for if that result would follow, the

court will leave the parties to their remedies at law, unless the granting of the specific relief can be accomplished with conditions which will obviate that result."

Tested by this rule the allegations of the bill are not such as to compel the court to exercise its equitable discretion to decree specific performance. A case of hardship is presented that can not be obviated by any conditions that can be properly imposed. It does not appear that the complainant had any specific object in obtaining the title to the particular land, or that it had any special value in his estimation or for his purposes. Nor is there anything to indicate that he can not obtain complete and adequate relief at law for any injury that he may have sustained. For these reasons, specific performance is not important to him.

On the other hand, the bill, filed on January 27, 1905, shows that within less than twenty days from the date of the contract, an application had been filed to have his vendor declared an habitual drunkard, and that the same ripened into a decree in less than twenty days more. It further shows that an offer to purchase, for \$825 per acre, the same land contracted for by him at \$600 per acre, had been made to, and accepted by the committee, and subsequently, on January 19, 1905, approved by the court. It is manifest, therefore, that a decree for specific performance in this case may work a great hardship upon the defendant Knott; for while the inadequacy of the consideration is not such as to "shock the conscience," and would not, alone, be sufficient to justify withholding the relief, it is of weight, to that end, in connection with other circumstances indicating hardship. The same may be said in respect of the probable mental incapacity of the defendant suggested by the conditions recited in the bill. The weight of each circumstance is greatly increased by conjunction with the other. *Allore v. Jewell*, 94 U. S., 506, 511. What is sound doctrine in a case like that for the cancellation of a deed, applies more strongly in defense to a bill for specific performance; because while strong and conclusive evidence is required to warrant relief by way of cancellation, far less is sufficient to defeat specific performance, and remit the complainant to his remedy at law. In the former case the decree is conclusive; in the latter it is not; it merely closes the door of equity to the complainant, leaving him free to pursue his remedy at law.

For the reasons given, the decree will be reversed with costs, and the cause remanded with direction to dismiss the bill without prejudice to the right of the complainant to pursue his remedy at law if so advised. It is so ordered.

Reversed.

**Carriers—Liability for Damage on Connecting Carrier.**—In an action against connecting carriers for delay and destruction of freight, an instruction that, if the initial carrier received and delivered the freight to its connecting carrier at the end of its route in good order, etc., it was not liable, held improperly refused. *Cincinnati, N. O. & T. P. Ry. Co. v. Stout* (Ky.), 90 S. W. Rep., 258.

## Court of Appeals of the District of Columbia.

WASHINGTON POST COMPANY, APPELLANT,

v.

WILLIAM L. WELLS.

**LIBEL; WORDS ACTIONAL PER SE; PRIVILEGE.**

Appellant published in its newspaper a report of a murder committed in another city, the article first locating the scene of the murder at a house "next door to the Tivoli, a gambling resort." Later, the article stated that evidence had been secured "that the murder was committed in the Tivoli building. The proprietor of the Tivoli is M. W., alias 'Father W.' (the plaintiff), who is said to be well known in Washington." The rest of the house was stated to be occupied by notorious Tivoli gamblers and as a disorderly house. Held, that the article was libelous per se, that it was not a privileged communication, and a motion by defendant for a verdict in its favor properly denied.

No. 1647. Decided May 1, 1906.

**APPEAL** by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 45,935, entered upon the verdict of a jury in an action for libel. Affirmed.

*Mr. Chapin Brown* and *Mr. J. P. Earnest* for the appellant.

*Mr. A. A. Lipscomb* for the appellee.

*Mr. Justice DUELL* delivered the opinion of the Court:

This appeal is taken from a judgment rendered on a verdict in favor of the appellee.

The appellant, publishing a newspaper in the city of Washington, received from its correspondent at Norfolk, Va., the article complained of as libelous, and in due course published it. The article relates to a murder committed in January, 1903, in the city of Norfolk. It purports to give the name and antecedents of the murdered man; such facts as could be gathered of the circumstances surrounding the commission of the crime; the place where it was committed; the arrest of certain named persons, and expresses confidence that the police will unveil the mystery and discover the murderer. It is that part of the article which purports to state the place where the act was committed that brings in appellee's name, and contains the alleged libelous matter. That place is first named as "a house on Church street, or next door in the 'Tivoli,' a gambling resort." Later on the article says: "The police tonight succeeded in securing evidence that the murder occurred in the Tivoli building. The proprietor of the Tivoli is Monte Wells, alias 'Father Wells,' who is said to be well known in Washington, which is his home. The remainder of the building is occupied by the notorious Tivoli gamblers and the Hill woman as a gambling and disorderly house."

The evidence shows that appellee is the one referred to as "Monte Wells," alias "Father Wells," and as to that there is no question. It is also shown that he was not the owner or proprietor of the Tivoli or Tivoli building, but had helped out behind the bar; that he had no connection with the "Tivoli." Publication of the article having been shown the plaintiff rested, and the defendant moved the court to instruct the jury to return a verdict for the de-

defendant on the ground that the article was not libelous at all upon the plaintiff. The motion was overruled and an exception taken. The defendant thereupon called the writer of the article who testified that it was written while he was investigating the murder, following up the efforts of the police, and trying to locate the criminal; that he was informed that plaintiff was the proprietor of the "Tivoli" saloon; and that the "Tivoli building" consisted of three parts under one roof, one being occupied as a saloon, another as an assignation house, and the third as headquarters of what were known as the Tivoli gamblers. The testimony relative to the building and its uses was corroborated by a police detective. At the conclusion of all of the testimony the motion to direct the jury to render a verdict for defendant, on the ground that the article sued upon was not libelous upon the plaintiff, was renewed, denied, and an exception taken by defendant.

The jury found for the plaintiff in the sum of one hundred dollars.

There is but one question presented by this appeal, although the assignment of error as stated is in form two-fold; that the court below erred in instructing the jury that the article was a libel upon the plaintiff; and that it was error to refuse to grant the motion for the direction of a verdict for defendant. It does not directly appear what instruction the court gave the jury, but the refusal of the court to direct a verdict for defendant was tantamount to such an instruction. The question at issue, however, is clearly enough presented in assigning error in the refusal of the court to direct a verdict for the defendant. If the article was not a libel upon plaintiff, then the motion should have been granted. Appellant's counsel state in their brief that the only question here is whether the article complained of is, as matter of law, a libel upon appellee.

We are clearly of the opinion that the article is a libel upon the appellee, and is so when viewed in its natural and obvious sense. No extrinsic evidence is required to determine that it is actionable. Taking the article in its entirety, and giving the ordinary meaning to the words employed which refer to the appellee, it is apparent that the appellee is charged with being the proprietor of the "Tivoli," which is stated to be a "gambling resort." The charge that the appellee is the proprietor of the "Tivoli" follows the statement that the murder was committed in the "Tivoli building," but when the article is considered as a whole, as it should be (Am. and Eng. Enc. of Law, vol. 18, p. 983, and cases there cited), the proprietorship refers to the so-called Tivoli gambling resort, rather than to the Tivoli building, but as it is said in referring to that building, that "the remainder of the building is occupied by the notorious Tivoli gamblers and the Hill woman as a gambling and disorderly house," we fail to apprehend how the position of the appellant is improved, whether the proprietorship alleged be of the "Tivoli" or the "Tivoli building." To charge a person with being the proprietor of a gambling house, or of a building used for the purpose of gambling and disorderly purposes seems to be equally actionable. The appellee proved the publication of the article complained of,

and also proved that he was not the owner or proprietor of the "Tivoli." It would seem that his proofs went further than necessary. No evidence was given by appellant showing, or tending to show, that the appellee was the proprietor of the Tivoli gambling house, or of the Tivoli building, or of any part of it. In *Conroy v. Pittsburg Times*, 139 Pa. St., 334, proof of publication of an article of the same general character as the one here complained of was held sufficient to place the burden on the defendant to show the truth of the publication. In the absence of any proof connecting appellee with the place referred to, it would seem unnecessary to discuss what is the meaning of the term "proprietor," for appellee is not shown to have had any interest in the building or in any business carried on in it.

It is further contended by appellant that the article sued upon is a privileged communication. It is urged that a murder having been committed, and that appellant, through its representatives, being engaged in assisting to discover the criminal, had a right to publish the article complained of under the rule of "qualified privilege." While it is undoubtedly true that there is a class of communications which are privileged when made in good faith during the prosecution of inquiries regarding a committed crime, we do not think that the publication in question comes within that rule. That the article was furnished and published in good faith the jury evidently believed as shown by the amount of the verdict. We agree with them on this point. But it appears to us that the reporter, in his zeal to furnish a sensational article and one giving it a local color, gratuitously dragged in the appellee's name, and that he was well known in Washington. This reference in no way tended to the discovery of the criminal, for there is not the slightest intimation that the appellee was under suspicion or connected in any way with the crime. A man has sunk very low in the social scale when such a statement as that made about the appellee will not to some extent disgrace or degrade him and injure his reputation. That the jury thought such injury was slight is quite apparent. Such statements falsely made of most people would inflict an injury not measurable in dollars and cents.

The article was libelous on its face and the court could not have rightfully directed a verdict at the close of plaintiff's case. Defendant failed utterly to prove the truth of the statements made relative to the plaintiff, and it therefore became the duty of the trial justice to submit the case to the jury. The plaintiff was entitled to a verdict for at least nominal damages, and it was for the jury to say whether more than nominal damages should be given plaintiff.

Finding no reversible error in the proceedings on the trial, the judgment will be affirmed with costs. It is so ordered.

Affirmed.

Carriers—Wrongful Ejection of Passenger.—A passenger wrongfully ejected from a train may sue on the contract of carriage or in tort at his election. *Delmonte v. Southern Pac. Co.* (Cal.), 83 Pac. Rep., 269.



## Court of Appeals of the District of Columbia.

ANNIE E. SCOTT, APPELLANT,  
v.  
DISTRICT OF COLUMBIA.

SIDEWALKS, DEFECTS IN; NEGLIGENCE; EVIDENCE OF  
SUBSEQUENT REPAIR.

1. In an action for personal injuries alleged to have been caused by slipping on an iron plate covering a sewer trap located in the sidewalk which, it was alleged, had become smooth, where there was no positive evidence of any prior accident at the same place, and where the evidence was insufficient to show that the plate was not reasonably safe for pedestrians using the sidewalk, held that the trial court properly directed a verdict for the defendant.
2. In an action for injuries alleged to have been caused by a defect in a sidewalk, evidence that subsequent to the injury the sidewalk was repaired is not admissible for the purpose of showing negligence on the part of defendant in respect of the condition of the sidewalk at the time of the happening of the injury.

No. 1615. Decided May 1, 1906.

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 44,886, entered upon a verdict directed by the court in an action for personal injuries. Affirmed.

*Mr. H. H. Glassie, Mr. Simon Wolf, and Mr. M. Cohen* for the appellant.

*Mr. E. H. Thomas and Mr. Henry P. Blair* for the appellee.

*Mr. Justice McCOMAS* delivered the opinion of the Court:

Annie E. Scott, the appellant, plaintiff below, sued the District of Columbia for its negligence and for injuries suffered thereby. At the close of the plaintiff's case, at the trial below, the court directed the jury to return a verdict for the District of Columbia, the appellee, the defendant below. From the judgment of that verdict the plaintiff below appealed. This ruling of the court requires us to carefully scrutinize the evidence in the record, which is as follows:

The appellant, Annie E. Siebold, then unmarried, with Gertrude Robinson, on April 13, 1901, about 9 o'clock in the morning, departing from the Pennsylvania Railroad station in Washington, went down the south side of B street and crossed Seventh street diagonally to the Center Market corner. She "stepped up" and as she stepped her left foot slipped from the top plate there, and her right foot slipped and turned under. She tried to catch hold of Miss Robinson, who had also stepped on the plate, but failing in that, the appellant fell back into the street. An old woman came to her assistance and helped her up. She then saw the plate at the corner and saw that it was an old plate which looked as if it had been worn smooth. By plate she meant the whole top of the sewer trap. Coming from Baltimore daily for more than two years, she usually approached Kann's store by crossing from B street to the market corner where she fell. The day of the accident it was not raining, but it was "a gloomy day with a gloomy, moist atmosphere."

Gertrude Elliott, formerly Gertrude Robinson, testified that she was appellant's companion and "stepped up" from the gutter just

where the sewer is; she reached it first and just as appellant "stepped up" she slipped and grabbed hold of the witness, who could not hold her, and appellant fell back into the street. The witness did not particularly observe the place, and did not observe the plate more than any plate on the street and could not remember whether it was worn or not. She remembered it was not in place. She travelled that way every morning for two years and supposed she had stepped upon the sewer trap, but she had never slipped. When the appellant in falling grabbed her, the witness was on the plate and was pulled back into the street.

Lewis P. Siebold, uncle of the appellant, a day or two after the accident went to the southeast corner of the market house at the northwest corner of Seventh and B streets and thoroughly examined the sewer plate at that point. He found it a corrugated iron plate sewer trap at the intersection of the street and was worn smooth and bright. When he rubbed his foot on it, it would brighten up right away, and it was on an incline toward the building line from the curb down.

Matilda Fendall (colored) testified that she had a market-stand during many years at the corner of Seventh and B streets; she knew the plaintiff who bought flowers from her every Saturday morning. On the morning in question she saw the appellant coming up B street, and later saw her fall on the iron at the corner and helped her up. The witness had seen a lady fall there once and cut her knee, and at another time she saw a gentleman fall, and had seen people fall there several times. It was a round iron in the trap and very smooth; whether the part that was smooth was back against the curbstone or a little west from it, she could not say, but it was the plate that was lifted out of the place to clean the sewer. She did not pay attention and could not tell whether the gentleman fell before the appellant's fall, or whether the other lady fell before or after the plaintiff's fall, though she had first said the other lady fell before the appellant, or whether or not there was snow or ice on the trap then. She did remember it was not drizzling upon the morning in question.

George W. Siebold, the father of the plaintiff, examined the plate six days after the accident and found it was worn smooth. It had been a corrugated plate of sheet-iron not very thick covering the immediate corner of the sewer; about 25 inches back from that there was a man-hole for the purpose of getting into the sewer. The iron was rather high in front and was depressed three-quarters of an inch as it ran back; both sides of this iron leading from the east and the south were more worn than directly in the center. The appellant, several physicians, and other witnesses gave evidence tending to show that by reason of her fall the appellant had received serious and permanent injuries.

The Supreme Court has said: "It is the settled law of this court when the evidence given at the trial, with all inferences that the jury could justifiably draw from it, is insufficient to support a verdict for the plaintiff, so that such verdict, if returned, must be set aside, the court is not bound to submit the case to the jury, but may direct a verdict for the defend-

ant.' *Randall v. Baltimore and Ohio Railroad*, 109 U. S. 478." *Metropolitan Railroad Co. v. Moore*, 121 U. S. 558, 570.

And again the court said, in a case wherein it held the trial court did not err in directing a verdict for the defendant, and in failing to leave the question of negligence to the jury: "That there are times when it is proper for a court to direct a verdict, is clear. 'It is well settled that the court may withdraw a case from them altogether, and direct a verdict for the plaintiff or the defendant, as the one or the other may be proper, where the evidence is undisputed, or is of such conclusive character that the court, in the exercise of a sound judicial discretion, would be compelled to set aside a verdict returned in opposition to it. *Phoenix Ins. Co. v. Dooster*, 106 U. S., 30, 32; *Griggs v. Houston*, 104 U. S., 553; *Anderson County Commissioners v. Beal*, 113 U. S., 227, 241; *Schofield v. Chicago & St. Paul Railway Co.*, 114 U. S., 615, 618; *Delaware & C. Railroad v. Converse*, 139 U. S., 469, 472. See also *Aerkfetz v. Humphreys*, 145 U. S., 418; *Elliott v. Chicago, Milwaukee & C. Railway*, 150 U. S., 245. . . . The judge is primarily responsible for the just outcome of the trial. He is not a mere moderator of a town meeting, submitting questions to the jury for determination, nor simply ruling on the admissibility of testimony, but one who in our jurisprudence stands charged with full responsibility. He has the same opportunity that jurors have for seeing the witnesses, for noting all those matters in a trial not capable of record, and when in his deliberate opinion there is no excuse for a verdict save in favor of one party, and he so rules by instructions to that effect, an appellate court will pay large respect to his judgment." *Patton v. Texas & Pacific Railway Co.*, 179 U. S., 658, 659.

On a rainy day, or on a "gloomy day with a moist atmosphere," all sidewalks may become more or less slippery if not unsafe. "That the District of Columbia is not an insurer of the safety of travellers upon the streets is of course unquestioned." *District of Columbia v. Moulton*, 182 U. S., 576, 578.

The appellant was the only person who testified to the condition of the sewer plate on the morning of the accident, and all she said was that after she was helped up "she saw the plate at the corner and that it was an old plate and looked as if it had worn smooth and as if it had had a great deal of traffic." The two Siebolds say the plate inclined slightly inward from the curb.

The witness Matilda Fendall, whose market stand was near by, was impressed that it was a round iron in the trap that was very smooth; "it was the plate that was lifted out of place to clean the sewer." G. W. Siebold testified that the manhole was 25 inches back from the immediate corner of the sewer, but he does not say that the cover of this manhole was smooth. Yet it was on this round iron in the trap which the witness Matilda Fendall said was very smooth that she saw the gentleman and lady fall. G. W. Siebold says the sewer plate was smooth, particularly on the east and south sides, and in the center not so much so, while L. P. Siebold says the plate was smooth and bright and would brighten up if he rubbed his foot on

it, but whether he rubbed his foot on the edges described by his brother or on the round iron, the plate that was lifted out of place to clean the sewer, described by Matilda Fendall, or over the whole plate, does not appear.

This court has held the District of Columbia accountable in cases of injury shown to have been caused by defective conditions of the sidewalk, and in some instances where the defect was slight, but as was said in *District of Columbia v. Haller*, 4 App. D. C., 414: 22 Wash. Law Rep., 761, the injury must be shown to have been caused by the defective condition of the street or sidewalk, such defective condition being shown to exist by the negligence of the defendant. It may be this plate had long been as the appellant says it looked directly after the accident, yet the only testimony of the condition of the plate before the accident was that of Matilda Fendall, who does not say the plate was smooth, but says the round iron over the manhole was smooth; and her testimony was that it was on the round iron that she saw the man and there probably she saw another woman fall, each at different times, both of which times from her testimony may have been subsequent to the accident which happened to the plaintiff. At least she does not finally say either accident preceded the accident to the appellant. Such a plate in a sidewalk smooth in some spots and not smooth in other parts may yet be reasonably safe for pedestrians. It is undisputed that this point was on a much travelled way, the appellant and her companion habitually for two years went over it without accident.

The court below was justified in concluding there was no positive evidence of any accident having happened at that place before the day in question, and we are not prepared to say that after scrutinizing the evidence the court was not justified in concluding that this plate was reasonably safe for pedestrians at such a thoroughfare. Every case of this character must be determined by its peculiar circumstances. With all the witnesses before the court and fuller statements than are usually imported into the record, the court may have been fully justified in believing the evidence was conclusive that the appellant fell by accident and not by reason of the defective condition of the plate as this plate was described at the trial.

If this frequented corner had been dangerous and had remained in a dangerous condition at this point for a considerable time, it was the duty of the plaintiff below to show that such condition existed and had continued for some time before the accident. We are not convinced that it was the duty of the court to assume that the plate and cover of the manhole were on the day of the accident precisely as they had been continuously for a considerable time before the accident, and thereupon to permit the jury to assume such fact. The only proof was, we repeat, Matilda Fendall's statement, that the manhole cover, "the round iron," was smooth, and it is plain the appellant fell before she reached it.

In *Oromarty v. Boston*, 127 Mass., 329, the decision was the ruling of a divided court and the opinion says: "It is to be remembered that the question of due care on the part of the city of Boston is not involved. The liability of cities

for defects in highways is created wholly by the statute, and, if the defect has existed for twenty-four hours, does not depend in any degree on the carefulness or negligence of the city."

The familiar rule concerning negligence and constructive notice which the court below obeyed was that clearly stated in *District of Columbia v. Woodbury*, 136 U. S., 450, 463, and applied in *District of Columbia v. Boswell*, 6 App. D. C., 416, etc.: 23 Wash. Law Rep., 423.

In his able and ingenious argument the appellant's counsel insisted, as he must insist, that the appellee upon a much used sidewalk had placed an iron sewer plate at the point where the appellant was injured and had allowed it to remain until it became a smooth polished surface, and had permitted it to become inclined at such an angle from the street way to the market-house as to increase the danger to pedestrians.

It is obvious that the learned court below concluded that there was no evidence legally sufficient to show the condition of the sewer plate and manhole prior to the accident, and the evidence that this part of the sidewalk was not reasonably safe appeared so far insufficient that under the rule we have first stated in this case the learned court below concluded the evidence legally insufficient, and in so deciding had a right to give proper weight to the statement of the appellant that the accident happened on "a gloomy day with a gloomy, moist atmosphere."

It is not necessary to consider the numerous cases cited upon the subject of the duty of inspection and of constructive notice to the appellee, nor need we discuss the well-settled rule determining the province of the jury in considering accidents alleged to have been occasioned by the negligence of municipalities. The only matter here is the application of that rule. In the absence of legally-sufficient evidence that the condition of the sidewalk at this point was the same prior to the day of the accident as it was at that time, and in the absence of definite evidence of any accident having happened at this place prior to the day of this accident, we are not prepared to say that it was the duty of the court to let the jury loosely infer essential facts not proved and then set aside the verdict and order a new trial. Our conclusion is that the court below did not commit reversible error in its instruction to the jury to return a verdict for the appellee.

2. The second assignment of error relates to testimony offered by the appellant. L. P. Siebold had testified that two days after the accident he examined the iron sewer plate at the northwest corner of Seventh and B streets and he described its condition as we have stated. He proceeded to show that ten days later he went back to the place, whereupon he was asked whether he saw the same plate there on the second visit, and the court below sustained the objection of defendant's counsel to this question and to any answer thereto. In our opinion the principle which was involved in the ruling of the learned court below is sustained by the opinion of the Supreme Court in *Columbia & P. S. R. Co. v. Hawthorne*, 144 U. S., 202, 206. Said Mr. Justice Gray: "This writ of error, therefore, directly presents for the de-

cision of this court the question whether, in an action for injuries caused by a machine alleged to be negligently constructed, a subsequent alteration or repair of the machine by the defendant is competent evidence of negligence in its original construction.

"Upon this question there has been some difference of opinion in the courts of the several States. But it is now settled upon much consideration, by the decisions of the highest courts of most of the States in which the question has arisen, that the evidence is incompetent, because the taking of such precautions against the future is not to be construed as an admission of responsibility for the past, has no legitimate tendency to prove that the defendant had been negligent before the accident happened, and is calculated to distract the minds of the jury from the real issue, and to create a prejudice against the defendant. . . .

"The true rule and the reasons for it were well expressed in *Morse v. Minneapolis & St. Louis Railway*, above cited, in which Mr. Justice Mitchell delivered the unanimous opinion of the Supreme Court of Minnesota, and after referring to earlier opinions of the same court the other way, said: 'But on mature reflection we have concluded that evidence of this kind ought not to be admitted under any circumstances, and that the rule heretofore adopted by this court is, on principle, wrong, not for the reason given by some courts, that the acts of the employees in making such repairs are not admissible against their principals, but upon the broader ground that such acts afford no legitimate basis for construing such an act as an admission of previous neglect of duty. A person may have exercised all the care which the law required and yet, in the light of his new experience, after an unexpected accident has occurred, and as a measure of extreme caution, he may adopt additional safeguards. The more careful a person is, the more regard he has for the lives of others, the more likely he would be to do so, and it would seem unjust that he could not do so without being liable to have such acts construed as an admission of prior negligence. We think such a rule puts an unfair interpretation upon human conduct and virtually holds out an inducement for continued negligence.' 30 Minn., 465, 468."

In the case before us the only effect of admitting the answer would have been to prejudice the jury against the appellee, as the Supreme Court suggests in the *Hawthorne* case just quoted. The same witness had been permitted to testify to the condition of this plate after the accident. A patent defect of the appellant's case was the absence of sufficient testimony as to the condition of the plate before the accident. We find no error in the ruling of the court upon this point.

The judgment of the court below must be affirmed with costs, and it is so ordered.  
Affirmed.

Carriers—Notice of Arrival to Consignee.—Where the consignee of goods is not present to receive verbal notice of their arrival, a notice sent through the mail is sufficient. *Braunton & Robertson v. Southern Pac. Co. (Cal.)*, 83 Pac. Rep., 265.

**Street Railroads—Instruction as to Proximate Cause.**—In an action for injuries to a person, while being driven in a carriage, by a collision with a street-car, an instruction held objectionable as misleading the jury on the issue of the cause. *Raymond v. Portland R. Co. (Me.)*, 62 proximate cause of the injury. *Hanson v. Manchester St. Ry. (N. H.)*, 62 Atl. Rep., 595.

**Street Railroads—Instructions as to Care Required.**—In an action against a street railway company for injuries to a passenger, an instruction stating that it was the duty of the conductor to exercise great care, without in any way limiting or defining that expression, was erroneous. *Atl. Rep.*, 602.

**Contracts—Separation Agreement.**—An agreement by a husband in consideration of the dismissal of a divorce action, instituted by his wife, to pay such wife a certain sum per month in case she should thereafter be unable to live with him, held valid. *Woodruff v. Woodruff (Ky.)*, 90 S. W. Rep., 286.

**Corporations—Creditor's Suit.**—In a creditor's suit against stockholders of a corporation to recover unpaid stock subscriptions, it was error for the court not to consider and find the value of services rendered by one of the defendants to the corporation and set off the same against his liability. *Turner v. Fidelity Loan Concern (Cal.)*, 83 Pac. Rep., 62.

**Corporations—Dividends Paid Out of Capital.**—Dividends paid out of the capital of a corporation held recoverable by receiver of the corporation on its insolvency as far as may be necessary for the payment of debts. *Mills v. Hendershot (N. J.)*, 62 Atl. Rep., 542.

**Life Insurance—Applications Where Copied from Original.**—Where an insurance company or its agents undertake to fill in an application from a previous application or statement made by applicant, it should be held to the strictest adherence to the terms of such application. *Hewey v. Metropolitan Life Ins. Co. (Me.)*, 62 Atl. Rep., 600.

**Life Insurance—Application When Signed in Blank.**—An application for life insurance, signed in blank, by one desiring insurance, and filled in by the company or its agents, should be construed more favorably to the applicant. *Hewey v. Metropolitan Life Ins. Co. (Me.)*, 62 Atl. Rep., 600.

#### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

## Legal Notices.

### FIRST INSERTION.

**George R. Linkins, Attorney**  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.  
In re Will of Katherine Frawley, Deceased.  
Administration. No. 13,686.

Michael J. Frawley having made application to the Supreme Court of the District of Columbia holding a Probate Court, for probate and record of the last will and testament of said Katherine Frawley, deceased, and for letters of administration de bonis non cum testamento annexo, to George R. Linkins, it is, this 3d day of July, A. D. 1906, ordered that Patrick Frawley, James Frawley, Kate McMahon, Patrick S. Frawley, Mary McMahon, Ann O'Loughlin, John O'Loughlin, Patrick O'Loughlin, and the unknown heirs at law and next of kin of said Katherine Frawley, deceased, and all others concerned, appear in said court, on Monday, the 13th day of August, A. D. 1906, at 10 o'clock A. M., and show cause if any they have, why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the [Seal] first publication to be not less than thirty days before said return day. **WRIGHT,** Justice. A true copy. Attest: **Wm. C. Taylor, Deputy Register of Wills.** 27-31

**Smith Thompson, Jr., Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.  
This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Edmund Compton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of July, 1906. **EMILY A. COMPTON**, 220 E. N. E. Attest: **Wm. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,772. Administration. [Seal.] 27-31

**Oscar Luckett, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.  
This is to Give Notice That the subscribers, of the District of Columbia and the State of Pennsylvania, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary C. Earle, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 3d day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 3d day of July, 1906. **GEORGE EARLE, JR.**, Surveyor's Office, D. C.; **CHARLES T. EARLE**, Navy Dept., D. C.; **MARY T. EARLE**, 121 W. Chestnut ave., Chestnut Hill, Philadelphia, Pa. Attest: **Wm. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,722. Administration. [Seal.] 27-31

**Henry H. Glassie, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.  
This is to Give Notice That the subscribers, of the District of Columbia and the State of Massachusetts, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Anna Lowell Woodbury, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 29th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 29th day of June, 1906. **WILLIAM L. PUTNAM**, 60 State st., Boston, Mass.; **LLEWELLYN JORDAN**, U. S. Treasury Dept., Wash., D. C.; **M. L. TURNER**, 1319 Mass. ave. N. W., Wash., D. C. Attest: **Wm. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,782. Administration. [Seal.] 27-31

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W.

## Legal Notices.

## In the Supreme Court of the District of Columbia.

Joseph H. Byram, S. Norris Thorn, Trustees of the Home Building Association of the District of Columbia, v. The Unknown Heirs, Devisees, and Representatives of Susan Barclay, Peter Stuyvesant, Morris Robinson, and Thomas Barclay, George Barclay, and Anthony Barclay. Equity No. 25,653. Docket 57.

## ORDER OF PUBLICATION.

The object of this suit is to establish of record the title in fee simple of the complainants to all that part of lot two hundred and nine (209), in square twelve hundred and fifty-nine (1259), in the city of Washington, District of Columbia, described as follows: Beginning for the same at the northwest corner thereof and running thence south 122 feet 8 inches to the south line of said lot; thence east 31 feet 1 inch; thence north 10 feet (the width of the alley hereafter reserved); thence east 2 feet 2 inches; thence north 20 feet, more or less, to the south line of lot conveyed to Jared Nicol; thence west 25 feet; thence north 80 feet to line of West street and thence west 8 feet 8 inches, more or less, to the place of beginning; with the right to use a ten-foot alley running along and over the south part of lots 208 and 210 to give an outlet on Montgomery street. Process having been duly issued against the defendants herein and returned "not to be found," although diligent effort has been made to find them, it is, this 28th day of June, A. D. 1906, ordered that the unknown heirs, devisees, and representatives of Susan Barclay, Peter Stuyvesant, Morris Robinson, Thomas Barclay, George Barclay, and Anthony Barclay, cause their appearance to be entered herein, on or before the first rule day occurring after one month from the date hereof. Provided a copy of this order shall be published twice a month for one month in The Washington Law Reporter and The Washington Times; otherwise this

[Seal] suit will be proceeded with as in case of default. (Signed) HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 27-2t

## Everett, Molnar, and Ewing, Solicitors

## In the Supreme Court of the District of Columbia.

P. G. Scott, Administrator of the Estate of James H. Woodworth, Deceased, and Arthur David, Ancillary Guardian of the Estate of Martha Ann David, an Isane Person, Complainants, v. Samuel A. Putman, Administrator of the Estate of James Smith, Deceased; John A. Smith, Walter Harrington, Frederick W. Steele, and Eliza L. Farrell, Heirs of James Smith, Deceased, and Henry Harrington, Minor, Heir of James Smith, Deceased, Defendants. In Equity, No. 26,227.

The object of this suit is to recover a certain sum of two thousand and forty dollars and ninety-seven cents heretofore wrongfully obtained by the defendant, Samuel A. Putman, administrator of the estate of James Smith, deceased, in the county court of Bent County, State of Colorado, from the complainant, P. G. Scott, administrator of the estate of James H. Woodworth, deceased, and to perpetually enjoin the said defendant, Putman, from paying said sum, or any part thereof, to said estate of James Smith, deceased. On motion of the complainant, it is, this 28th day of June, A. D. 1906, ordered that Henry Harrington, one of the defendants in the above-entitled cause, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Times. By the

Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 27-3t

## Sheehy &amp; Sheehy, Attorneys

## Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Joseph P. Brass, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 29th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of June, 1906. THOMAS P. BROWN, 530 4½ st. S. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,637. Administration. [Seal.] 27-3t

## Legal Notices.

## Leon Tobriner, Attorney

## Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Salomon Sugenheimer, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 3d day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 2d day of July, 1906. JENNIE KLEEBLATT, 813 11th st. N. E.; MORITZ BLUMENFELD, 833 H st. N. E.; RAYMOND BLUMENFELD, 833 H st. N. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,773. Administration. [Seal.] 27-3t

## SECOND INSERTION.

## Oscar Luckett, Attorney

## Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Anna M. Devote, also known as Maria A. Devote, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of June, 1906. OSCAR LUCKETT, 844 D st. N. W. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,668. Administration. [Seal.] 26-3t

## Wm. D. Hoover, Attorney

## Supreme Court of the District of Columbia, Holding Probate Court.

## Estate of Richard Crowther, Deceased.

No. 13,691. Administration Docket —.

Application having been made herein for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by The National Safe Deposit Savings and Trust Company of the District of Columbia, it is ordered this 28th day of June, A. D. 1906, that Olympia Crowther and George Crowther, and all others concerned, appear in said court on Wednesday, the 8th day of August, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 26-3t

## Jos. A. Burkart, Attorney

## Supreme Court of the District of Columbia, Holding Probate Court.

## Estate of Eldridge J. Smith, Deceased.

No. 13,718. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Melende H. Smith, it is ordered this 29th day of June, A. D. 1906, that Andrew C. Smith, Theodore C. Smith, Mary Burns, Fanny Rascovitche, Nora Smith, Maud Hayes, Frederick Smith, Henry Smith, and the unknown heirs of the following: Frank Smith, David Smith, Lorenzo D. Smith, and Sarah Smith Bennett, and all others concerned, appear in said court on Wednesday, the 15th day of August, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 26-3t

**Legal Notices.**

**Tracy L. Jeffords, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Louise Miller Clark, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 25th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of June, 1906. **BENJAMIN W. CLARK**, 830 N. C. ave. S. E. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,707. Administration. [Seal.] 26-3t

**Woodbury Blair, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Woodbury Lowery, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 25th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of June, 1906. **WOODBURY BLAIR**, Corcoran Building. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,688. Administration. [Seal.] 26-3t

**J. Dawson Williams, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of John Crane, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of June, 1906. **J. DAWSON WILLIAMS**, Berry & Whitmore Bldg., 11th and F sts. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,677. Administration. [Seal.] 26-3t

**Chas. Poe, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Clarence M. York, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of June, 1906. **WM. SCOTT TOWERS**, Kellogg Building. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,769. Administration. [Seal.] 26-3t

**Cole & Donaldson, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, the duly appointed collector of the estate of John M. Weitz, deceased, has been authorized and directed by the Probate Court of the District of Columbia to perform and discharge all the duties of administrator with the will annexed of said estate, including giving notice to creditors, paying all debts against said estate, and completely settling said estate. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of January, 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand and seal this 27th day of June, 1906. **LATIMER E. STINE**, Collector, Administrator, 140 E street northeast, by **E. Golden**, Donaldson, his Attorney. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,813. Administration. [Seal.] 26-3t

**Legal Notices.**

**Berry & Minor, Solicitors**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**

**Charles H. L. Johnston et al., Complainants, v. Virginia S. Johnston et al., Respondents.**  
 Equity No. 25,911.

The object of this suit is to make partition by sale of the following-described real estate in the city of Washington, District of Columbia, to wit: Part of original lot numbered one (1), in square numbered one hundred and eighty-four (184), and a part of the ground adjoining the southeast corner of said square, part of original lot numbered sixteen (16), in square numbered one hundred and eighty-four (184), part of original lot numbered two (2), in square numbered four hundred and eighty-four (484), and all of lot numbered seventy-four (74), in W. W. Johnston's subdivision of lots in square numbered two hundred and fourteen (214), belonging to the estate of William W. Johnston, deceased, to divide the proceeds thereof among the parties entitled, and to appoint trustees therefor. On motion of the complainants by their solicitors, Berry & Minor, and Hugh B. Rowland, it is, this 27th day of June, A. D. 1906, ordered that the infant respondent, Violet Johnston, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star Newspaper before said fortieth day. By the Court: **WENDELL P. STAFFORD**, Justice. True copy. Test: **J. R. Young**, Clerk, by **J. W. Latimer**, Asst. Clerk. 26-3t

**Stuart McNamara, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Edward E. Taylor, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 27th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of June, 1906. **E. EVERETT TAYLOR**, 1923 Calvert st. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,735. Administration. [Seal.] 26-3t

**John Baum, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Joseph E. Russell, Deceased.**

No. 6352. Administration Docket.

Application having been made herein for probate of the last will and testament of said deceased, by Alice Henry, it is ordered this 28th day of June, A. D. 1906, that Fannie S. Roby, Joseph L. Russell, Infant, and Mary M. Russell, Infant, and all others concerned, appear in said court on Wednesday, the 8th day of August, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **WENDELL P. STAFFORD**, Justice. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 26-3t

**Edward S. Bailey, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of William Walter, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of June, 1906. **DORA KRAMER**, 1424 C st. S. E. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,629. Administration. [Seal.] 26-3t



**Legal Notices.**

**Nauck & Nauck, Attorneys.**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John Beveridge Smyth, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of June, 1906. THOMAS MILLER, 1616 7th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,674, Administration. [Seal.] 26-St

**Chas. W. Clagett, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John H. Mann, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 27th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of June, 1906. CHARLES F. MANN, 224 10th st. S. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,768, Administration. [Seal.] 26-St

**R. A. Curtin, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Mary Molloy et al. v. Ellen O'Brien et al.**  
 No. 23,188. Equity Doc. 58.

The object of this suit is to partition by sale the estate of William SENTRY, also known as William SENTRY, deceased, and to distribute the proceeds to heirs at law and parties entitled thereto. On motion of the complainants, it is, this 25th day of June, A. D. 1906, ordered that the defendants, Margaret Carpenter, John Carpenter, Joseph Carpenter, May Carpenter, and Lillie Carpenter, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter, before said day. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 26-St

**THIRD INSERTION.**

**Charles F. Benjamin, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Thomas B. Le Fee v. Unknown Heirs of William Smith.**  
 Equity, No. 23,225. Docket 58.

The object of this suit is to establish title by long and adverse possession to subplot 8 in square numbered 849 of the city of Washington, D. C., improved by frame dwelling numbered 908 Fifth street southeast. On motion of the complainant, and it appearing that diligent efforts have heretofore been made to find the defendants hereto, it is, this 19th day of June, 1906, ordered that the defendants, being the unknown heirs, devisees, and alienees of William Smith, who owned the said realty in or about the year 1820, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published in The Washington Law Reporter and The Washington Times once a week for three successive weeks before the return day herein named. By the Court: WENDELL P. STAFFORD, Justice. A true copy. Test: John R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 25-St

Justice blanks of every description for sale at this office.

**Legal Notices.**

**Perrin W. Frisby, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**In re Estate Fannie Chapman, Deceased.**  
 Administration No. 13,218.

DECEASED NISI.  
 (Confirming Sale of Real Estate.)

Upon consideration of the report of John C. Norwood, executor in the above-entitled cause, filed herein on the 18th day of June, A. D. 1906, that he has sold the following-described land and premises, situate in the county of Washington, in the District of Columbia, and distinguished as the west 25 feet front by full depth of 150 feet of lot number six (6), in book number six (6), in Todd and Brown's subdivision of Pleasant Plains and Mount Pleasant, as the said subdivision appears of record in the plats or plans of the county of Washington, District of Columbia, in the surveyor's office in said District, and containing 3,750 square feet of ground, together with the improvements, consisting of a two-story, seven-room frame building, with halls and water, and outhouses and stable upon the premises, known as number 745 Columbia road, formerly Steuben street N. W., in the District of Columbia; subject, however, to a deed of trust for (\$800) eight hundred dollars, to Anna Krikstenie for the sum of (\$1,510) fifteen hundred and ten dollars cash over and above the said trust; it is, by the court, this 18th day of June, A. D. 1906, adjudged, ordered, and decreed that the said sale be and the same is hereby ratified and confirmed, unless cause to the contrary be shown on or before the 23d day of July, A. D. 1906. Provided a copy of this decree be published in The Washington Law Reporter and The Washington Bee once a week for three successive weeks before the last said date. WENDELL P. STAFFORD, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 25-St

**Cole & Donaldson, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration d. b. n. on the estate of Noel I. Barron, late of said District, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of December, A. D. 1906; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of June, 1906. R. GOLDEN DONALDSON, Century Building. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,668, Administration. [Seal.] 25-St

**J. J. Darlington, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Henry Murray, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 15th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 15th day of June, 1906. B. FRANCIS SAUL, 7th and L sta. N. W.; PATRICK SMYTH, 101 D st. S. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,681, Administration. [Seal.] 25-St

**Wm. C. Woodward, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Alexander Elliott, Jr., sometimes known as Alexander Elliott, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 21st day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of June, 1906. MARY LAVINIA ELLIOTT, 508 I st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,764, Administration. [Seal.] 25-St



**Legal Notices.**

**Joseph A. Burkart, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Nellie McLaughlin, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 21st day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of June, 1906. AMANDUS F. JORSS, 315 18th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,559. Administration. [Seal.] 25-8t

**J. Edgar Smith, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Caroline E. Patrick, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 21st day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of June, 1906. RUNNIOU M. PATRICK, 1473 Douglas st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,728. Administration. [Seal.] 25-8t

**E. A. Newman, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**

**Mary L. Skidmore et vir. vs. Alfred G. Gross et al.**  
 No. 12,739. Equity, Dec. 31.

The trustees herein having reported a written offer to purchase at private sale parts of lots 4 and 5 in square 552, with the improvements thereon, in the city of Washington and District of Columbia, and particularly described in the proceedings, for the sum of \$4,300 in cash. It is, this 19th day of June, 1906, ordered that the said trustees be and they are hereby authorized to accept said offer, and, upon compliance with the terms of sale by the purchaser, the said sale shall stand ratified and confirmed, unless cause to the contrary thereof be shown on or before the 20th day of July, 1906. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said last-mentioned date. HARRY M. CLABAUGH, Chief Justice. A true copy. [Seal] Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 25-8t

**V. H. Wallace, Attorney**  
**In the Supreme Court of the District of Columbia.**  
**Frederick A. Dodge, Plaintiff, v. Mary J. Carpenter,**  
**Defendant. At Law. No. 45,460.**

The object of this suit is to recover \$306.61 with interest, for supplies furnished by the plaintiff to the defendant at her request, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 20th day of June, 1906, ordered that the defendant appear in this court on or before the fortieth day exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Times. By the Court: WRIGHT, Justice. A true copy. [Seal] Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. 25-8t

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**Legal Notices.**

**R. Ross Perry & Son, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the State of Idaho, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Jennie Griffin Vale, formerly Jennie Heap, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of June, 1906. MORGAN GRIFFIN HEAP, Twin Falls, Idaho. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,753. Administration. [Seal.] 25-8t

**Blair & Thom, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the State of Massachusetts and District of Columbia, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Alice Brown Train, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 20th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 20th day of June, 1906. ORANGE S. GORDON, 115 Elm st., Amesbury, Mass.; FRED'K A. KENDALL, 315 Corcoran Bldg., Wash., D. C. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,727. Admn. [Seal.] 25-8t

**R. S. Smith and Geo. H. White, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Harriet E. Wilson, Complainant, v. Lucy A. Jackson et vir., John L. Jackson; George W. Armstrong, Ulysses W. Armstrong, Lillian E. Jones, Minors, Defendants. Equity No. 25,542.**  
 Reuben S. Smith and George H. White, the trustees herein, having reported sales of sublot No. 183 in square No. 206, and sublot No. 206 in square No. 271, in the city of Washington, District of Columbia, to John L. Jackson for the sum of \$2,775 and Peter H. Allen for the sum of \$1,706, respectively, it is, this 20th day of June, 1906, ordered that the said sale be confirmed, unless good cause to the contrary be shown on or before the 23d day of July, 1906. Provided that a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before the aforesaid [Seal] day. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 25-8t

**Irvin B. Linton, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Daniel Shannon, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of June, 1906. ANNA F. SHANNON, 1421 Ninth st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,747. Administration. [Seal.] 25-8t

**Leon Tobriner, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Nicholas McGowan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of June, 1906. JEROME MCGOWAN, 520 First st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,711. Administration. [Seal.] 25-8t

**Legal Notices.**

**Tucker & Knyon, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Virginia E. Dade, Deceased.**

No. 13,987. Administration Docket.—

Application having been made herein for probate of the last will and testament and a codicil thereto of said deceased, and for letters testamentary on said estate, by Nannie M. Dade, it is ordered this 19th day of June, A. D. 1906, that Agnes M. Fitzhugh, Ellen L. Mayo, Anita M. McAfee, Lawrence D. Alexander, Welcome T. Alexander, Frank D. Alexander, F. Parker Thornton, B. Baylor Thornton, Hay T. Thornton, McCarty Thornton, Mary Wallace Hayden, Virginia D. Latham, Francis C. Dade, Edith Shinn, William A. Dade, Lawrence T. Dade, and Mayo Dade, and all others concerned, appear in said court on Tuesday, the 24th day of July, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **WENDELL P. STAFFORD,** Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 25-3t

**B. F. Leighton and C. C. James, Attorneys**  
**In the Supreme Court of the District of Columbia.**  
**Special Term for Probate Business.**  
**In the Matter of the Estate of Samuel L. Denty,**  
**Deceased. Admn. No. 12,821.**

Benjamin F. Leighton and C. Clinton James, executors, having reported to the court the sale, under a decree heretofore passed herein, of certain real estate belonging to the estate of said Samuel L. Denty, deceased, for the purpose of settling said estate, to wit, lots numbered three (3) and four (4) in Blagden et al. subdivision, in square seven hundred and thirty-eight (788), as per plat in book "W. F.," page 92, of the surveyor's office of the District of Columbia, unto one James O. Holmes, for the sum of fifty-seven hundred dollars (\$5,700), it is, this 18th day of June, A. D. 1906, hereby adjudged, ordered, and decreed that said sale be, and same hereby is, ratified and confirmed, unless cause to the contrary be shown on or before the 18th day of July, 1906. Provided a copy of this order be published once a week for three successive weeks before said date in The Washington Law Reporter and The Evening Star newspaper. By the court: **WENDELL P. STAFFORD, Justice.** A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 25-3t

**John B. Lerner, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Sophia Sautter, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Tuesday, the 10th day of July 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons are entitled to distributive shares or legacies or a residue, notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 18th day of June, 1906. **THE WASHINGTON LOAN & TRUST COMPANY,** Andrew Parker Treasurer, by John B. Lerner, Attorney. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,872. Administration. [Seal.] 25-3t

**Wilton J. Lambert, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Floretta J. Laporte, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 18th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of June, 1906. **FRANK B. LAPORTE,** 1718 First st. N. W. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,712. Administration. [Seal.] 25-3t

**Legal Notices.**

**Levi H. David, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Anna Howell Stewart, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Thursday, the 12th day of July, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 19th day of June, 1906. **ANDREW STEWART,** by Levi H. David, Attorney. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,991. Administration. [Seal.] 25-3t

**Edwin S. Bailey, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Edwin W. Spaulding, Complainant, v. The Unknown**  
**Heirs of Clark Hamil, Deceased, Defendants.**  
**Equity No. 26,047. Doc. 58.**

The object of this suit is to declare title in Edwin W. Spaulding to duplicate bounty warrant No. 58,276, the original of which was issued to Clark Hamil on the 14th day of February, 1857, under act of Congress of March 3, 1851. On motion of complainant, it is, this 29th day of May, A. D. 1906, ordered that the defendants, the unknown heirs, next of kin, legatees, or devisees of Clark Hamil, deceased, cause their appearance to be entered herein on or before the first rule day occurring three months after the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for the period of three months in The Washington Law Reporter and The Washington Post. **HARRY M. CLABAUGH,** Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. June 18; July 6, 13; Aug. 3, 10.

**FOURTH INSERTION.**

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscribers, who were heretofore by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Margaret Edes, late of the city of Washington, D. C., deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Thursday, the 12th day of July, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment of all creditors of the said estate, under the court's direction and control, when and where all creditors are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 18th day of June, 1906. **HENRY H. FLATHER,** Executors of Margaret Edes, deceased. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,888. Administration. [Seal.] 24-4t

**J. J. Darlington and W. C. Sullivan, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**James Martin v. Jeremiah Boothe et al.**  
**No. 26,280. Equity.**

**ORDER.**  
 The object of this suit is to perfect complainant's title to lot 6, in square east of square 664, Washington, D. C. On motion of the complainant, it is, this 8th day of June, A. D. 1906, ordered that the defendant, Jeremiah Boothe, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs, devisees, and alienees of Nathaniel Walker Appleton, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published for three months, once a week for three successive weeks during the first month, and twice a month during each of the two succeeding months in The Washington Law Reporter and The Washington Times. **WENDELL P. STAFFORD,** Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. Je 8, 15, 22, Jy 6, 13, au 3, 10

# The Washington Law Reporter

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### Appeals in Probate Proceedings.

In a recent decision of the Kentucky Court of Appeals (*Brooks v. Paine's Executors*, 90 N. W., 600), the provisions of the statutes of that State relative to the probate of wills, by one of which any person interested in the probate of a will is authorized to prosecute an appeal to the Circuit Court, are construed. It is held that general creditors of an insolvent heir of a decedent, who claims that a will offered for probate, and by which their debtor is disinherited, is fraudulent, may appeal from an order admitting the same to probate, where the debtor himself fails to prosecute such an appeal.

### Master and Servant—Safe Appliances.

In *Santa Fe Pacific Railroad Company v. Holmes*, decided by the Supreme Court of the United States, and reported in the advance sheets for July 1, 1906, the action was by an engineer formerly employed by the defendant to recover damages for personal injuries received in a head-on collision. It was held that the promulgation by a train-dispatcher of special orders sufficient, if obeyed, to insure the safe operation of two passenger trains approaching each other on the same track, is not a complete discharge of the railway company's duty to furnish safe places and appliances for its employees, if the dispatcher afterwards becomes aware of the danger of a collision,

growing out of a disobedience of such orders, which he may guard against by issuing new orders. A railway employee, injured by a head-on collision which would not have occurred if the train having the right of way had not passed a station six minutes ahead of schedule time, as fixed by special orders from the train dispatcher, may hold the railway company accountable, where the dispatcher failed to issue orders to intercept the train at that point after being informed that it was two minutes ahead of time in passing a point but a few miles away.

### Master and Servant—Unsafe Appliances.

In a recent case decided by the United States District Court for the Northern District of California (*In re Fulton*, 143 Fed., 591), it was held that, while it is the duty of a master to furnish reasonably safe appliances for the use of his servants, it is not his duty to repair defects arising in the daily use of an appliance not permanent in its character, such as a rope sling used in loading and discharging a vessel, which is liable to become worn and unsafe at any time. As to such appliance, if the master supplies the workmen with new and sound rope, which they may use in repairing or renewing the slings when required, the vessel is not liable for the injury of a seaman through a failure to use the new material, even though it is due to the negligence of an officer. The officer, in such case, is not the agent of the owner, but a fellow-servant.

### Election of Remedies.

In *Barnsdale v. Waltmeyer*, decided by the United States Circuit Court of Appeals for the Eighth Circuit (142 Fed., 415), it is said that the fatuous choice of a fancied remedy that never existed and the futile pursuit of it until the court adjudges that it never had existence, is no defense to an action to enforce an actual remedy inconsistent with that first invoked. In application of this principle, it is held that a suit to rescind a contract for misrepresentation and default of performance, which was dismissed on its merits, is no defense to an action brought to enforce the contract. On this point the court said:

"The fifth defense was that the plaintiff brought a suit in equity against the defendant in the court below to rescind the agreement which the plaintiff is seeking to enforce in this action for the misrepresentation and fraud of the defendant and for his failure to perform his part of the contract, and that that suit was, on August 3, 1903, dismissed upon its merits. It is

contended that by the institution and prosecution of this suit in equity the plaintiff irrevocably elected to rescind the contract, and thereby estopped himself from maintaining this action to enforce it. But the fatuous choice of a fancied remedy that never existed, and its futile pursuit until the court adjudges that it never had existence, is no defense to an action to enforce an actual remedy inconsistent with that first invoked through mistake. In *re Van Gorman*, 41 Minn., 494, 496, 43 N. W. 334; *Morris v. Rexford*, 18 N. Y., 552, 557; *Butler v. Hildreth*, Mass., 5 Metc., 49, 52; *Kelsey v. Murphy*, 26 Pa., 78, 83; *Bunch v. Grave*, 111 Ind., 351, 12 N. E., 514; *McLaughlin v. Austin*, Mich., 62 N. W., 719, 720; *Kinney v. Kiernan*, 49 N. Y., 164, 169; *McNutt v. Hilkins*, 80 Hun 235, 239, 29 N. Y., Supp., 1047; *Gibbs v. Jones*, 46 Ill., 319, 321. This rule is well illustrated in *Morris v. Rexford* (18 N. Y., 552, 557), where the plaintiff sold merchandise upon the promise of an immediate payment of the purchase price in cash and repeatedly demanded payment, but nothing was paid. He replevied the goods and they were delivered to him under the writs, but the action in replevin had not been tried when another action, which the plaintiff had brought upon the contract to recover the purchase price, was tried, and he secured a judgment. This judgment was reversed, and the case was remanded for a new trial, under instructions that the actions of replevin and the recovery of the goods under them constituted an election of that remedy and a bar to the action upon the contract, if the plaintiff had a choice of remedies when he commenced the actions in replevin, but that, 'if it shall appear on another trial that no such right of election existed, then the replevin suits will have no effect at all upon the present controversy, and the plaintiff will be entitled to recover, provided the jury shall again find that the defendant was the purchaser.'

What effect a final recovery in the present suit may have upon the replevin need not now be considered, further than to observe that such a recovery will necessarily determine that the prior actions of replevin are not maintainable."

**Principal and Agent—Declarations of Agent.**—The admission or claim of one pretending to act as another's agent, and that he has authority to do so, has no tendencies to prove the agency. *McCune v. Badger* (Wis.), 105 N. W. Rep., 667.

**Principal and Surety—Failure to Inform Sureties of Embezzlement.**—Failure of directors of a bank to inform sureties on the bond of the bank treasurer of prior embezzlements by him held not to have amounted to fraud releasing the sureties. *Watertown Sav. Bank v. Mattoon* (Conn.), 62 Atl. Rep., 622.

**Master and Servant—Duty of Carrier to Keep Track in Repair.**—Violation of a railroad company's duty to keep its track in a reasonably safe condition, or warn its employees, may be charged in general terms. *Illinois Cent. R. Co. v. Leisure's Adm'r* (Ky.), 90 S. W. Rep., 269.

## Court of Appeals of the District of Columbia.

WILLIAM BEASLEY, ADMINISTRATOR,  
APPELLANT,

v.

THE BALTIMORE & POTOMAC RAILROAD  
COMPANY.

PRACTICE; AMENDMENT; CARRIERS; FREIGHT CHARGES; DEMAND FOR AMOUNT IN EXCESS OF THAT STATED IN BILL OF LADING; CONVERSION.

1. Where the course of action stated in an amendment is the same as that stated in the original declaration, charging it in a different form does not render the amendment open to the defense of the statute of limitations.
2. Trover will lie for the value of property unlawfully withheld under an unlawful claim for freight charges.
3. Where a demand is made by the owner of the property, with a tender of the amount called for by the bill of lading, the refusal of the carrier to deliver, except upon payment of a sum in excess of the contract price, is at least prima facie evidence of a conversion.
4. Whether, when the way-bill received by the carrier on whom the demand is made calls for a sum in excess of that stated in the bill of lading, the carrier has a right to detain the goods, for the purpose of ascertaining which amount is correct, *quære*; but conceding such right, the carrier would be entitled to hold the goods for a reasonable time only; and the question whether the carrier acted with reasonable promptness and diligence in ascertaining the facts is ordinarily one for the jury.
5. Certain race horses were shipped from a point in Florida to this city, the rate named in the bill of lading being \$180.10. On arrival of the horses in this city the owners presented the bill of lading, tendering the amount called for by it, and demanding the horses, which demand was refused by defendant on the ground that the way-bill furnished it called for \$301.80. The owners offered to pay one-half the excess, which defendant declined, and also refused to ascertain the correct rate by telegraph. The owners refusing to pay the excess, the horses were sent to a livery stable. Six days later, defendant's agent having ascertained that the amount called for by the bill of lading was the correct rate, offered to deliver the horses on payment of that amount, which offer the owners declined on the ground that by reason of the improper manner in which the horses had been cared for they had become ill and of no value. Thereafter the defendant caused the horses to be sold as unclaimed freight. Plaintiffs sued in trover and ease to recover damages for the conversion and for the unlawful detention. The trial court directed a verdict for defendant. *Held*, that this was error for which the judgment must be reversed.
6. The bill of lading given to the owners of the horses by the initial carrier, and by him presented to defendant, was the evidence of the amount to be collected and was of controlling character.

No. 1653. Decided June 5, 1906.

**APPEAL** by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 45,323, entered upon a verdict directed by the court in an action of trover. Reversed.

*Mr. R. F. Downing* and *Mr. Chas. A. Keightin*, for the appellant.

*Mr. F. J. McKenney* and *Mr. J. S. Flannery*, for the appellee.

*Mr. Justice DUELL* delivered the opinion of the Court:

Appellant's intestate, John W. Bradshaw, on April 4, 1899, shipped from Tampa, Florida, to Washington, D. C., two horses, one of which he owned and in the other of which he had a half interest. These horses, with two others belonging to other parties, were delivered to the Savannah, Florida & Western Railway Company, and that company issued a bill of lading

to one P. Mulcahey as owner and shipper of all four horses, making a through rate of \$130.10 over its own and connecting lines to Washington, D. C. The horses were delivered to appellee at Quantico, and by the appellee were brought into Washington, arriving about noon on April 7, 1899.

Early in the afternoon of that day Bradshaw and Mulcahey, who had traveled with the horses in accordance with the terms of the bill of lading, applied to appellee's agent for their horses, exhibiting their bill of lading and at the same time tendering him \$130.10, the sum fixed in the bill as the charge for freight. The agent refused to deliver the horses, upon the ground that he had in his possession a way-bill which obliged him to collect \$201.60. The agent suggested that they pay the difference between the two rates, and that if the lower rate should prove the correct one the overcharge would be refunded. Bradshaw offered to pay one-half of the difference if the agent would release his two horses, but this offer was declined. He also requested the agent to telegraph to Tampa to ascertain the correct rate; and also offered to telegraph at his own expense if the agent would agree to accept the answer received as correct. The agent refused to accede to either of these propositions.

That same afternoon appellee's agent had the horses taken from the car and sent to a livery stable. The agent thereafter took steps to ascertain the correct rate, with the result that on April 13, six days after the arrival of the horses, he was advised that a mistake had been made in the way-bill furnished him, and, being authorized to deliver the horses on payment of the sum set out in the bill of lading, he notified Bradshaw and Mulcahey that they might have their horses upon payment of \$130.10. They refused to accept this offer upon the ground that, owing to the alleged improper manner in which the horses were cared for, they had become ill, and that their value had been wholly destroyed during the period of detention. Some days later the appellee was authorized by the court to sell the horses as unclaimed freight. The sale brought sufficient to pay the freight and cost of keeping, and left a surplus of \$14.70, which sum is still in the possession of the appellee.

Thereupon Bradshaw brought this suit. The declaration as filed contains three counts: The first in trover, alleging a conversion of the horses and claiming their value at the date of the alleged conversion; the second and third counts are in case for damages caused by the unlawful detention. In November, 1905, a further count was added, averring negligence in the care and custody of the horses and claiming damages for the results of such negligence. The general issue was pleaded to all the counts, and also the statute of limitations to the fourth. These are the essential facts and are substantially undisputed.

At the conclusion of the evidence, appellant requested the court to give four instructions to the jury—all of which were refused, and to which refusals exceptions were taken and allowed. Upon the motion of the appellee, the court instructed the jury to return a verdict for it on all of the counts in the declaration. Appellant duly excepted to such ruling.

From the judgment in favor of the appellee upon the verdict directed by the court, this appeal was taken.

The assignment of errors sets forth that the court erred: First, in directing a verdict for the defendant; second, in refusing to grant the prayers offered by the plaintiff, and in not submitting the case to the jury; third, in admitting in evidence the way-bill; fourth, in admitting evidence of the inquiry made by the appellee company relative to the rate, and of the fact that the company offered to deliver the horses on April 13th.

Considering these assignments in reverse order we are of the opinion that the fourth and third are not well taken. Appellant's declaration, as we have seen, contained four counts. At least as to the counts in case and for negligence appellee had a right to show why the horses were detained, and that it was duly diligent in trying to learn the facts, and that when it learned them it offered to return the horses. We are not prepared to say that such evidence was not admissible under the trover count of the declaration.

The second and first alleged errors will be considered together. In passing it may be said that we do not understand that the plea that the cause of action did not accrue within three years before the filing of the amendment to the declaration is insisted upon. However that may be, we consider that it is not well founded. The injury therein complained of is the same wrong set forth in the three original counts. The cause of action remaining the same, charging it in a different form does not render the amendment open to the defense of the statute of limitations.

The evidence does not present any serious conflict as to the facts. The facts admittedly show that appellant's intestate had title to the property in question; that the appellee had possession of the horses; that appellant's intestate tendered the amount due under the contract with the initial carrier for the carriage of the horses, and that the sum tendered was far in excess of any claim that appellee had for its own services in transporting the horses over its line; that appellee refused to surrender the horses except upon payment of a greater sum, and one which later was admitted to be an unlawful charge by appellee's offer to surrender the horses on payment of the lesser sum. It is contended by appellee that this refusal to surrender the horses was a conditional refusal, and therefore does not amount to a conversion. We can not agree with such claim and the weight of authority certainly does not sustain the contention. Trover will lie for the value of property illegally withheld under an unlawful claim for freight charges. *Marsh v. U. P. Ry. Co.*, 3 *McCrory*, 236, 247; *Adams v. Clark*, 9 *Onsh.*, 215; *Richardson v. Rich*, 104 *Mass.*, 156. In the case at bar we have a demand by the owner for the horses, with a tender of the contract price for their carriage, and a refusal to deliver them, except upon payment of a sum in excess thereof. This is at least *prima facie* evidence of a conversion. To offset this appellee insists that it had a right in view of the circumstances to detain the horses for the purpose of ascertaining whether the bill of lading correctly stated the amount due, or whether a way-bill which

was in its possession set forth the true amount. Admitting, without conceding, the correctness of this contention the appellee would only be entitled to hold them for a reasonable time. *Northern Transportation Co. v. Sellick*, 52 Ill., 249.

As was said in that case which is one where the carrier refused to deliver a carriage until a larger sum than the contract price was paid:

"It was their duty to deliver the carriage on its arrival, on his offering to pay the freight agreed upon. The refusal to do so was wrongful, and was, in itself, evidence of a conversion of the property. The demand in June, on the arrival of the property, gave appellants an opportunity of delivering the carriage to the appellee, and thus relieving themselves from all responsibility. By refusing to do so, unless on compliance with an extortionate demand, greatly beyond the agreed compensation for carrying, threw the entire responsibility, in case of loss, upon the appellants. The refusal to deliver is evidence of a conversion, and appellants have offered nothing to destroy its effect."

Another case much in point is *Evansville, &c., R. R. Co. v. Marsh*, 57 Ind., 505. There the initial carrier agreed to send a horse over its own line and the connecting line of the defendant for a stated sum. The defendant's agent at the terminal point demanded a sum equal to the regular freight rates of both lines. Suit was brought and recovery had. The court said at page 507:

"This freight question seems to us to be within a narrow compass. If there was a connection or agreement between the two roads mentioned, by which the contract in question for through freight was authorized, then the Evansville company was bound by it, and was liable to deliver the horse on the tender of the amount of the freight, \$24.60, stipulated for in the contract. If there was no such connection, and the agent who made the contract at Vinton, Iowa, had no power to bind the Evansville company by that contract, then the Evansville company had a right to collect her own freight, and was not bound to collect that of the other company. She might receive the amount tendered in discharge, and, if it only equaled her own charge, she might retain the whole of it. If it exceeded that charge, she would account to the other company for the surplus. The Iowa company had agreed to ship the horse to Evansville for a given sum of money. That company thereby assumed the burden of satisfying the charges of the roads over which she should ship the horse, and if it took the whole amount she had charged for the entire route, she would have to pay it, if it left nothing for her own company."

The admitted testimony shows that appellee's agent declined to take any steps outside the usual leisurely custom to learn the correct amount to be collected. It took the appellee six days to learn that it was unlawfully detaining the horses. We can not say, and we think the trial court could not say, as it virtually did by directing a verdict for appellee, that six days was so clearly a reasonable time that there was no room for submitting the question of due diligence to the jury. Appellant's fourth request that the court instruct the jury, brings up this question in the most favorable light that

appellee had any right to have it presented. That request was as follows:

4th. To return a verdict for the plaintiff in a sum equal to the difference between the value of Bradshaw's horses on the 7th of April, 1899, and the value of the said horses on the 13th of April, 1899, as such difference should appear from the evidence, unless the jury should find as a fact that the agent of the railroad company had reasonable cause to refuse delivery of the said horses on April 7th, 1899, and unless the jury should further find, the officers and agents of the said company exercised due diligence and acted with reasonable promptness and in good faith to ascertain whether or not a mistake had been made in respect of the proper rate of freight, and in causing such mistake to be corrected.

Appellant's intestate had presented the bill of lading, which was the contract with the initial carrier. There is no ambiguity about it. The way-bill upon which appellee relies for its justification for a refusal to respect the bill of lading is not so clear and precise as to warrant, beyond any question, appellee's right to rely upon it in exclusion of the bill of lading. It shows upon its face that the through rate on the shipment was \$130.10. Then follow these words and figures:

Plant System.	Charleston	North of	Collect.
	to Richmond.	Richmond.	
136 00	40 00	25 60	201 60

The printed word "collect" is written over with some letters that may be intended for "Coll." No reason is apparent for writing over the printed word if the letters written mean the same as the printed word. Furthermore it would seem as though the through rate being given the separate rates from point to point were also given so that each carrier could figure its share of the through rates. In any event with these two papers before him it would seem as though the question whether appellee's agent had reasonable cause for refusal to deliver the horses until he had made an investigation, was one for the jury. We have no doubt that the other question of diligence and promptness on the part of appellee's agent was one for the jury to decide in view of all the testimony. It was error in the court below to refuse the appellant's fourth prayer and for such refusal, if for no other, the judgment must be reversed.

We may concede that appellee had a lien upon the horses for its own freight charges and the charge of the preceding carriers, and until that lien was satisfied it had a right to hold the horses. That lien, however, was only to the extent of the contract price, as shown by the bill of lading. If it claimed a lien for a larger sum it did it at its peril. Appellant's testator was not bound to submit to any different charge. He was under no legal obligation to pay the unlawful charge and take his chances of the repayment of the amount of the overcharge. To establish any such rule would result in putting every shipper of goods at the mercy of the carrier.

The contract of carriage exhibited by Bradshaw to the appellee was the evidence of the amount to be collected. It was of controlling character. "The contract between the ship and

the shipper is that which is contained in the bills of lading delivered. The ship's bill was designed only for its information and convenience; not for evidence, as between the parties, of what their agreement was. If it differs from the others, they must be considered as the true and only evidence of the contract." *The Thames*, 14 Wall., 98, 105.

It is the custom to collect the freight charges at the point of delivery. To what extent a bill of lading is of binding force between the carrier making the contract and the one making the collection does not appear. The relation between the connecting lines could probably have been more satisfactorily shown. However this may be, it is immaterial at this time. Nor do we see any necessity for reviewing at greater length the questions involved herein. They may be presented in different light should the case again come before this court. For the reasons stated the judgment must be reversed, with costs, and the case remanded to the court below for further proceeding not inconsistent with this opinion.

Reversed.

CHARLES E. THORN, JOSEPH A. THORN,  
AND HELEN THORN McLAUGHLIN, AP-  
PELLANTS,

v.

SARAH A. THORN, APPELLEE.

APPEALS; CONSENT REFERENCE; DECEDENT'S ESTATE;  
DOMICILE.

1. To a petition for letters of administration alleging the domicile of decedent to have been in this District, an answer was filed alleging that his domicile was in New Jersey. The Probate Court referred the matter to the auditor for determination. After this order of reference, appellants filed a petition objecting to administration here, and on their motion that petition was referred to the auditor to be considered in connection with the former reference. *Held* that the reference to the auditor was not such a consent reference as amounted to a submission of the controversy to arbitration, and a motion on that ground to dismiss an appeal from a decree overruling exceptions to the auditor's report, denied.
2. Decedent was born in this District, and lived here until he was 20 years old, when he obtained a situation in New York, where he remained two years, when ill health compelled him to resign. During these two years he boarded in New Jersey, where he was registered as a voter. On resigning his employment in New York he returned to Washington, remaining here a week, when he went to Arizona, remaining there some months. His health not improving, he returned to Washington, and though intending to go to Saranac, New York, died before doing so. Letters written by him while in Arizona indicated that he regarded Washington as his home, and intended to return there. *Held* that the evidence was sufficient to show that he had abandoned his New Jersey domicile, and resumed the domicile of his origin in this city.

No. 1686. Decided June 5, 1906.

APPEAL from a decree of the Supreme Court of the District of Columbia, holding the Probate Court, Probate No. 13,003, overruling exceptions to a report of the auditor and granting letters of administration. Affirmed.

Mr. Alex. Wolf and Mr. J. D. Sullivan for the appellants.

Mr. I. O. Gittings and Mr. J. M. Chamberlin for the appellee.

Mr. Justice DUELL delivered the opinion of the Court:

In this appeal, which is from a decree of the Supreme Court of the District of Columbia overruling exceptions of the auditor's report and granting letters of administration to the appellee, we have presented for our determination the question of the domicile, at the time of his death, of one James A. Thorn.

It appears that letters of administration were first issued to Charles E. Thorn, one of the appellants, upon the sworn petition of said Thorn reciting the death of James A. Thorn, at the city of Washington, District of Columbia, June 16, 1905, then of full age, a citizen of the United States, and a resident of said District; that he left surviving him as his next of kin and heirs at law his mother, the appellee, a sister and two brothers, all save the petitioner being residents of the said District; that he died intestate, unmarried, and without any adopted child, and that he left no real estate, but left certain personal property, consisting of an interest in the estate of Columbus W. Thorn, valued at about ten thousand dollars. The other next of kin and heirs at law waived service of citation and requested that letters be issued to the petitioner, and such letters were duly issued to him June 20, 1905. The appellee, Sarah A. Thorn, filed, on October 9, 1905, a petition setting forth in substance the recitals contained in the prior petition of Charles E. Thorn, save as to the value of the interest of James A. Thorn in his father's estate, which she places at about nineteen thousand dollars. She further averred that she was induced by Charles E. Thorn to consent to the petition filed by him (upon which letters were issued June 20, 1905), by reason of his representation that under the laws of the District of Columbia the brothers and sister of the decedent were entitled to the estate; that she had relied upon such representations because Charles E. Thorn was a member of the Bar of the District of Columbia; and, having learned that she, as the mother of the decedent, was entitled to the estate and had a primary right of administration, she asked that letters of administration issued to Charles E. Thorn be revoked and that letters be granted to her. Upon this petition an order to show cause why the relief prayed should not be granted was issued. Thereupon Charles E. Thorn answered the petition and the rule to show cause, admitting the allegations of the petition, other than those relating to the residence of the decedent, and that he had deceived his mother as to her rights in and to the estate of the decedent. The answer further set out that he had inadvertently stated the residence of his brother to be the District of Columbia in the petition upon which letters were issued to him. In conclusion he asked that, as his mother appeared to be dissatisfied with his acting as administrator, the court should accept his resignation as administrator, protesting, however, against the grant of letters to his mother, upon the ground that the domicile of the decedent was in the State of New Jersey.

His resignation was accepted; and, the cause coming on to be heard on the petition and answer, an order was made referring it to the auditor of the Supreme Court of the District of



Columbia to determine the domicile of the deceased.

These appellants then filed a petition setting forth that they were the brothers and sister of the decedent, and stating that they desired to enter of record their objection to the administration of his estate by the Supreme Court of the District of Columbia, for the reason that the court had no jurisdiction of the estate, as the domicile of the decedent at the time of his death was in the town of Westfield, in the State of New Jersey. To this petition Sarah A. Thorn demurred, whereupon the petitioners moved the court to refer their petition to the auditor of the court, so that it might be considered on the reference theretofore made by the court. The petition being considered by the court, an order was made referring it to the auditor and overruling the demurrer filed thereto.

The auditor upon due notice proceeded with the reference, and considerable testimony was taken by him. This testimony was returned by the auditor with his report made to the court, and as a part thereof. The finding of the auditor was that the domicile of the decedent at the time of his death was in the District of Columbia. Exceptions were filed by the appellants to the report of the auditor, which, so far as may be necessary, will be hereafter referred to. The cause then came on, and was heard by the court upon the auditor's report and the exceptions filed thereto, with the result that, after hearing counsel for all of the parties, the exceptions were overruled and the report of the auditor was ratified and confirmed. By the same decree letters of administration were ordered to be granted to the appellee upon her giving a bond, and on February 23, 1906, letters were duly issued to her.

1. Preliminary to determining the merits of the appeal, we are called upon to briefly consider the motion made by the appellee to dismiss the appeal. This motion is based upon the ground that the whole controversy was determined by the auditor of the Supreme Court of the District upon a consent reference, made with no reservation whatever, and for the further reason that all the exceptions taken by the appellants to the finding of the auditor were too general in character.

We do not think the motion to dismiss is well founded on either ground. The exception that the report of the auditor in his finding that James A. Thorn, at the time of his death, was domiciled in the District of Columbia, is sufficient to bring before us the real question here in issue. Nor do we consider the contention that the decision of the auditor is final is well taken. When the petition of Sarah A. Thorn for her appointment as administrator, and the answer thereto, came on for hearing, the court below referred the matter to the auditor to determine the domicile of the deceased. There is nothing which shows that this reference was made by consent. After that order was made, a petition was filed by these appellants objecting to the administration of the decedent's estate in the District of Columbia; and that petition was, on motion of appellants, referred by the court to the auditor to be considered in connection with the reference already made. There is nothing in this to indicate that the appellants

waived any right of appeal from the decision of the auditor. It appears that the auditor in making his return with his report, and as part thereof, returned the evidence; that exceptions were filed to his report by the appellants, and that these exceptions were overruled and the report of the auditor confirmed by the court, after hearing from counsel for all parties. The reference to the auditor was not, in our opinion, such a consent reference as amounted to a submission of the controversy to arbitration. There was no complete abdication in favor of the auditor, as claimed by appellee. The appeal should be determined on its merits.

2. We have carefully considered the report of the auditor and the evidence upon which the same is based. In the main, we think that the facts warrant his conclusion that the domicile of the decedent at the time of his death was in the District of Columbia. It appears that decedent was born in Washington, and continuously lived there until he arrived at the age of about 20 years; that in the fall of 1902 he obtained a situation as clerk with a firm of stockbrokers in the city of New York, and remained with that and another firm until the fall of 1904, when ill health compelled him to resign his position. During that period he boarded at the home of his brother, Charles E. Thorn, at the latter's home in Westfield, N. J. While there he was registered as a voter and voted in Westfield, and indicated in such ways as a single man would an intention to make Westfield his home, at least for the time being. Had he died while employed in New York and residing in Westfield, we would have no doubt that his domicile was in the latter place, and that there his estate should be administered. During this period he was an unmarried man and was neither a freeholder nor householder, but a boarder at the home of his brother, and in a position to change his residence at any time and without any special inconvenience to himself.

Upon giving up his employment in New York City he returned to Washington, where he remained one week, when he went to Arizona and remained there until the following spring. His health, meanwhile, had not improved, and after returning to Washington he was advised by his physician to go to Saranac, N. Y. His mother went there intending to obtain a cottage and to stay with him. During her absence on this errand his health became such that he was moved to a hospital in Washington, where he died on June 16, 1905.

While in Arizona he wrote many letters to his mother and to his friends in the East. These letters indicate that at first he felt that his condition was improving, but not for long. He was homesick all of the time, and his letters expressed a desire to return to Washington. In one letter he wrote: "Homesickness is a mighty bad thing to have, but I will be back in a little while now, mother. . . . Shake hands with F street and everything around Washington for me." In nearly every letter he asked: "How is everything at home?" Finally, in February, his mother sent him a check so that he could come home.

Some letters which he wrote to his friends at and near Westfield indicate a desire on his part to be present at some of the social events there

transpiring, but there is nothing indicating an intention to return and make Westfield his home. Some of the witnesses testify that he expressed by letter and otherwise to them an intention, when he recovered his health, to continue in business in New York, but there is nothing which satisfies us that he had any intention of making Westfield his future home. From a perusal of all of the testimony, including the decedent's letters, we can arrive at but one conclusion, and that is that he considered Washington his home, and it was to Washington that he longed to return. This, it seems to us, is almost conclusively shown in a letter written by him under date of February 6, 1906, in which he says: "When I get back to Washington, think I will fight it out there; don't reckon I will get beyond walking distance of the dinner bell again. It is only two months and then I can come home again. How is everything at home? I sure would like to be there."

We are of the opinion that the evidence shows that he abandoned his residence in Westfield when he left there in November, 1904, and that he resumed the domicile of his origin.

It would serve no good purpose to review at greater length the facts, nor need authorities be cited to sustain our conclusion. When the facts are determined in a case of this character, there is no difficulty in applying the correct rule of law thereto.

Finding no error in the decree appealed from, it follows that it must be affirmed with costs. And it is ordered.

Affirmed.

MARY F. FORD, APPELLANT,

v.

JOSEPH C. FORD.

DEEDS; ANCIENT DOCUMENTS; ACKNOWLEDGMENT, IMPEACHMENT OF; EVIDENCE.

1. A deed more than 30 years old is an ancient document and proves itself.
2. The acknowledgment of a deed can only be impeached for fraud, and the evidence of fraud must be clear and convincing. The certificate of a notary public, in proper form, that the deed was acknowledged before him, will prevail over the unsupported testimony of the party grantor that the same was false and forged.
3. In an action of ejectment defendant claimed under a deed 31 years old purporting to have been executed by plaintiff and his father, conveying the property to C, who thereafter conveyed to defendant, step-mother of plaintiff. The deed to C bore the certificate, in proper form, of a notary public, since deceased, that the same had been acknowledged before him. The only evidence in support of plaintiff's claim that the deed was forged was his own unsupported testimony that he had never executed or acknowledged it, with the added circumstance that at the time it bore date he could read and write, whereas it was signed by mark. On the other hand, the testimony showed the good reputation of the notary; the grantee C testified to the bona fides of the transaction, and the testimony to the effect that on coming of age plaintiff demanded his share of the property, and that he received his share of the purchase money greatly preponderated. *Held*, that the defendant was entitled to have a verdict in his favor directed by the trial court, and its refusal of her request for such a direction was error for which the judgment must be reversed.

No. 1006. Decided May 1, 1906.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, at

Law, No. 45,527, entered upon a verdict in an action of ejectment. Reversed.

Mr. John Raum and Mr. George H. Lamar for the appellant.

Mr. B. F. Leighton for the appellee.

Mr. Justice McCOMAS delivered the opinion of the Court:

This is an action of ejectment by Mary F. Ford, the appellant, against Joseph C. Ford, the appellee, in the Supreme Court of the District of Columbia, to recover parts of lots 20, 21, and 22 in square 388, in Washington, the lots being particularly described in the declaration.

At the trial, the appellee, the plaintiff below, introduced a deed from Thomas Bulfinch to Mary A. Ford, dated November 20, 1854. This deed was the common source of title. The appellee testified that Mary A. Ford was his mother; that she died intestate before the war; that her husband, Herbert Ford, and the appellee, her child, survived her, and that his father, Herbert Ford, died September 14, 1901. It was admitted that the appellant had long been and was at the time of trial in possession of the property in controversy.

The appellant introduced in evidence a deed dated June 2, 1874, purporting to be executed and acknowledged by Herbert Ford and Joseph C. Ford, the appellee, conveying the property in controversy to Charles B. Church in fee simple as trustee. The consideration recited is \$500 and the deed further recites that Herbert Ford and Joseph C. Ford are the husband and heir at law, respectively, of Mary Ann Ford, deceased. The grantees signed by making their respective marks. The deed purports to have been signed, sealed, and delivered in the presence of Edward H. May, notary public, and the following is the acknowledgment of the deed:

DISTRICT OF COLUMBIA, } ss:  
City of Washington, }

I, Edward H. May, notary public in and for the county aforesaid, in said District do hereby certify, that Herbert Ford and Joseph C. Ford parties to a certain deed, bearing date on the second day of June, A. D., 1874, and hereto annexed, personally appeared before me in the county aforesaid the said Herbert Ford and Joseph C. Ford being personally well known to me to be the persons who executed the said deed and acknowledged the same to be their act and deed.

Given under my hand and notarial seal, this twentieth day of June, A. D. 1874.

E. H. MAY,

Notary Public.

[Seal Edward H. May, Notary Public, Washington, D.C.]

The appellant then introduced in evidence a deed dated October 3, 1877, from Charles B. Church, trustee, to Mary F. Ford, the appellant. This deed purports to be a conveyance in fee simple of the lots in controversy for the consideration of \$500 "to have and to hold for her and their sole use, benefit, and behoof forever." The appellant here rested.

The appellee thereupon offered in evidence the original deed from Herbert Ford and Joseph C. Ford to Charles B. Church, trustee, dated June 2, 1874, and produced by the recorder of deeds from the files of his office. The appellee, over the appellant's objection, was permitted

to testify that he never saw this deed until after his father's death and then saw it on file in the office of the recorder of deeds; that until his attorney notified him he had no knowledge of the existence of such a deed.

He never signed or acknowledged it. At its date he was able to read and write; he had known Charles B. Church from childhood, but never knew Edward H. May, the notary public.

The appellee offered as a witness Charles B. Church, the grantee in the last-mentioned deed, who testified that he was well acquainted with Herbert Ford and the appellant; they were honest people, the appellant being the money-maker of the family; he had for years invested her savings; in 1874 he, Church, was largely engaged in real estate transactions and associated with his relative E. Kurtz Johnson in many business affairs; he knows the property in controversy, but on account of his advanced age, and the long lapse of time, he could not at the time of testifying (about April 13, 1905) recall the particulars of the transaction. Church testified the deed was in his own handwriting; Edward H. May lived near him, was trusted by him, and as notary public took the acknowledgment of many deeds wherein Church was concerned, and May is now dead; after a careful search for papers, and his papers covering a long period of time were destroyed or lost, he can not recall the transaction, but was confident he had never paid any money of his own. His best impression was that Herbert Ford came to the witness, Church saying he, Ford, wanted to sell the property and make a division with his son (the appellee who proffered Church as a witness) and the appellant wanted to buy it, and the money used in the purchase of the property was either money belonging to the appellant in his hands for investment or money furnished by E. Kurtz Johnson, now deceased. He remembers that the appellant owned other property and did not remember why he held the property so long as trustee before conveying it to appellant. Here the appellee rested.

Thereupon the appellant proved by George E. Johnson the handwriting of Edward H. May. The witness stated May died in 1886, and that the signatures of May upon the original deed of June 2, 1874, were genuine.

The appellant herself testified that when she was 21 years old, about October, 1859, she married Herbert Ford; she took care of the appellee and sent him to school and paid for his education, and that he could read and write at the time the deed to Church was executed. Her husband was a drinking man engaged in boating on the Potomac, while she was engaged in business separate and apart from her husband, running several stores and owning and operating a number of huckster wagons, and from her earnings she saved her money and bought various parcels of real estate; when the appellee became of age he insisted that his father sell the property in controversy and that the appellee be given his share. Finally, it was agreed that Church should advance \$500 for the property and take title to the property for the appellant until she had repaid the money. After some years she paid Church the purchase money, and she knew that the appellee received one-half of that sum and purchased a half dozen suits of

clothes and took a trip to Rhode Island, and later, in full confidence that the deed from Church conveyed the property in controversy to her, she built two brick houses and paid for the same out of her own money.

Kate E. Dudley, a witness for the appellant, a teacher, testified that she was the child of Herbert Ford and of the appellant, and a half sister of the appellee, and they both lived with their parents, and in 1874 she often heard the appellee demand that his father sell the property in controversy so that the appellee could get his share, and after the sale to Church witness saw Herbert Ford pay the appellee \$250, saying that the money was his part of his mother's estate; this transaction occurred about 1874 at their home in the presence of the family; the appellee had full knowledge of the erection of the brick houses by the appellant on the lots in controversy, and of the appellant's claim of ownership to that property during those years, and the appellant always collected the rents for the houses. There was evidence that the lots in dispute were worth about \$800 or \$900, and the brick houses erected by the appellant about \$1,100 or \$1,200. The verdict was for the appellee.

We have stated with precision and with fullness all of the testimony in this case as it appears from the record, because in our opinion the evidence was legally insufficient to support the verdict for the plaintiff below. The plaintiff's right to recover is grounded upon the claim that his signature to the deed was a forgery, and that the acknowledgment was false and fraudulent, and that the appellee was absolutely ignorant of the execution and acknowledgment and delivery of the deed and ignorant of its existence. From the facts and circumstances of this case it follows that his father, Herbert Ford, grantor, or the appellee's witness, Charles B. Church, grantee, or both were guilty of fraud and forgery if the appellee's statement be true. The deed itself at the time of its production at the trial was more than thirty years old, and therefore an ancient document. It proved itself. 1st Greenleaf on Evid., p. 720 (16 Ed., Wigmore's).

The appellee offered the original deed in evidence only to attack it, and called the grantee, Charles B. Church, who appears to have been an old man of intelligence and probity. The appellee who proffered the witness held him out as such, and his good reputation is not disputed. Church proved that the deed or paper writing itself was in his own handwriting, and that the signatures of the notary to the appellee's mark and to the certificate of acknowledgment were genuine, and testified to the good reputation of May, the notary, and that he frequently employed him as a notary to acknowledge deeds in which Church was concerned; and, speaking after the lapse of thirty-one years, Church, the appellee's witness, gave as his best impression that Herbert Ford came to Church desiring to sell the property in controversy so as to make a division with his son, the appellee, Herbert Ford saying the appellant wanted to buy the property, and that the money used was the appellant's money in Church's hands for investment, or money furnished by Mr. Johnson, and in effect that he

had conveyed the property finally to the appellant, but he can not recall why he held it so long as trustee.

The testimony of the appellant and of the witness Dudley strongly confirm the statement of Oburoh, the grantee, in the disputed deed. The evidence of these three witnesses greatly preponderates over the appellee's evidence. He alone testified in his behalf. He denied the signature and acknowledgment of the deed and the receipt of the purchase money. The proof is convincing that when he became of age he demanded his share in the lots of which his mother died seized and persuasive that he received one-half of the purchase money in full satisfaction, and it is not disputed that during twenty-eight years thereafter he remained silent, and continued silent while his step-mother erected the brick houses, and for many years collected the rents from the property in dispute. It is now said this is accounted for by the survival of his father, the tenant by the curtesy. It is true the witness Dudley said that after appellee learned that the appellant had purchased the property he often said he intended to get the property back.

We need not discuss the various questions raised by the assignment of errors in this case, nor decide whether or not the validity of this deed can be thus assailed directly in an action of ejectment, nor determine whether the act of a justice or notary in taking and certifying the acknowledgment of the deed is a judicial act or merely ministerial, nor whether such act is a judicial act when the proper official certifies to the acknowledgment of a deed wherein a married woman joined under the statute then requiring a privy examination, acknowledgment, and declaration of a married woman, a statute long in force here and in most of the States, and ministerial only in all other cases; nor what rights the appellant had in her own earnings from her separate business as against her husband.

The evidence in this case presents a single question. The appellee here denied all knowledge of this deed, denied he had executed and acknowledged it. Only one circumstance in evidence tended to corroborate his denial. This deed is signed by his mark, and at its date he could read and write. It is not suggested that Herbert Ford, the other grantor, could read and write, and it may be that May, the notary, assumed that the son could not write, and therefore asked both to sign by making a mark, the names of the two grantors being written. These were colored people and many such were then illiterate. If the name was written by another hand in the presence of the grantor and at his instance or with his assent, it is his act. The disposing capacity, the act of mind, the essential ingredients of the deed are his, if he then makes the acknowledgment certified by the notary the deed is his deed. See *Gardner v. Gardner*, 5 Cush., 483; *Insurance Co. v. Nelson*, 103 U. S., 544, 547; *Young v. Duvall*, 109 U. S. 573, 577; *Frost v. Deering*, 21 Me., 159.

For the purposes of this case we may accept the views stated in second Wharton on Evidence, section 1052 (3d ed.): "The true view is that the certificate of acknowledgment is *prima facie* proof of the facts it contains, if within the

officer's range, but is open to rebuttal, between the parties, by proof of gross concurrent mistake or fraud. In favor of purchasers for valuable consideration without notice, it is conclusive as to all matters which it is the duty of the acknowledging officer to certify, if he has jurisdiction. As to all other persons it is open to dispute."

The evidence to impeach a deed must be something more than the mere unsupported denial of a grantor. Chief Justice Breese well says: "The unsupported testimony of a party to a deed, that he did not execute it, shall not prevail over the official certificate of the officer taking the acknowledgment. Public policy, the security of titles, the peace of society, demand such a rule, and a strict adherence to it." *Ker v. Russell*, 69 Ill., 669; *Lickmon v. Harding*, 65 Ill., 505. The expressions of the Supreme Court, although used in relation to deeds wherein married women were parties, state a rule of public policy. In *Insurance Co. v. Nelson*, 103 U. S., 544, 548, the court said: "When a deed or mortgage, regular in appearance, and bearing the genuine signature and duly certified acknowledgment of the grantor or mortgagor, is attacked, the evidence to impeach it should be clear and convincing."

In the case of *Howland v. Blake*, 97 U. S., 624, the court said: "The burden rests upon the moving party of overcoming the strong presumption arising from the terms of a written instrument. If the proofs were doubtful and unsatisfactory, if there is a failure to overcome this presumption by testimony entirely plain and convincing beyond reasonable controversy, the writing will be held to express correctly the intention of the parties. A judgment of the court, a deliberate deed or writing, are of too much solemnity to be brushed away by loose and inconclusive testimony."

The acknowledgment of a deed can only be impeached for fraud, and the evidence of fraud must be clear and convincing. *Russell v. Baptist Theological Union*, 73 Ill., 337.

"The mischief that would ensue from a different rule could not be well over-stated." *Young v. Duvall*, 109 U. S., 573, 577. See *Hitz v. Jenks*, 123 U. S., 297.

In Maryland, where parol evidence is admitted in a court of law to impeach the execution and acknowledgment of a deed for fraud or forgery (*Davis v. Hamblen*, 51 Md., 541), the court recognizes that great weight must be given to official acts certifying to the validity of deeds, and in *Ramsburg v. Campbell*, 55 Md., 231, the court says: "The allegation of the appellant, Sarah, that she never acknowledged the mortgage before Justice Hemmick, or any other justice of the peace, involving as it does a charge of gross misconduct and criminal violation of duty, on the part of the certifying justice, must be sustained by strong, disinterested, preponderating evidence. 1 Greenleaf, 106.

"The burden of proof is upon the appellant. The justice of the peace is an officer invested with high ministerial and judicial powers; one of the most important of which is the power to take and certify the acknowledgment of deeds and other instruments, upon the validity of which the titles to all real estate and vast

amounts of personal property depend. If the verity of their acts can be impeached by the negative testimony of the parties interested to destroy the deed, the most disastrous consequences might ensue."

And in Missouri, in *Springfield E. & T. Co. v. Donovan*, 147 Mo., 633, it is said: "Moreover, extraneous evidence to overcome the certificate of acknowledgment must be strong and convincing, and must satisfy the mind of the court with reasonable certainty. . . . A bare weight or preponderance of the evidence will not do."

And in Illinois the court held that public policy requires proof full, clear, and convincing to impeach the integrity of the certificate of acknowledgment of a deed. In a case where both grantors swore to the fraud whereby their signatures were obtained, the court held the proof insufficient, saying: "But as between the immediate parties to the deed, the acknowledgment may be impeached for fraud, collusion, or imposition, but not otherwise; and the evidence to warrant the cancellation or setting aside of a deed upon the ground that the acknowledgment was obtained through fraud, collusion, or imposition, must, as we have held, 'by its completeness and reliable character, fully and clearly satisfy the court that the certificate is untrue and fraudulent.'" *Marston v. Brittenham*, 76 Ill., 614. And in *Lickmon, etc. v. Harding*, 65 Ill., 505, we held, in the absence of proof of fraud and collusion on the part of officers taking and certifying the acknowledgment of a deed, the officer's certificate, in proper form, must prevail over the unsupported testimony of the party grantor that the same was false and forged." *Fitzgerald v. Fitzgerald et al.*, 100 Ill., 388.

And again the same court said: "In taking acknowledgments of deeds, mortgages, and other instruments, an officer acts under the sanction of his official oath, and his certificate of official acts, required by law to be made, ought to be regarded as of as high a grade of evidence as testimony given under oath. The officer acting in this case has since died. Although deprived of the testimony of the officer on the witness stand, there remains the presumption that will always be indulged as to the certainty of an officer's acts done in the capacity in which he is serving. After his death his certificates of official acts must be heard to speak for him, otherwise there would be no security for titles acquired under instruments required by law to be acknowledged before such officers." *Warrick et al. v. Hull*, 102 Ill., 283.

In the *People v. Bartells*, 138 Ill., 333, relied on by the appellee, while the court says that the cases holding the certificates of acknowledgment to be judicial acts were correctly decided and that a change of the statute respecting the separate examination of a married woman leads that court to determine that such certificates ordinarily are ministerial acts, the case of *Lickmon v. Harding*, supra, is endorsed "in so far as it holds that the officer's certificate, in the absence of fraud and collusion, will prevail over the unsupported testimony of the grantor that the same was false and forged."

In Ohio, the Supreme Court describes the precise case now before us on this appeal, say-

ing: "We doubt whether a case can be found where the certificate of the magistrate has been allowed to be impeached on the ground of fraud without evidence charging the grantee with notice of fraud, or the officer taking it with complicity therein." *Baldwin v. Snowden et al.*, 11 Ohio, 212.

In the case before us the good reputation of May, the notary who certified to the acknowledgment of the deed in this case, was fully proved, and the grantee was produced as a witness by the plaintiff below and testified to the bona fides of the deed and of the whole transaction. There was no evidence whatever suggesting fraud or forgery except the testimony of the plaintiff below, the appellee here, that he did not sign and acknowledge this deed. The appellee's evidence, therefore, was legally insufficient to sustain a verdict in his favor. The evidence of the grantee in the disputed deed and of the appellant and of the witness Dudley, and the corroborating circumstances to which we have adverted, make a case strongly preponderating against the plaintiff below, and the appellant properly moved the court to instruct the jury to render a verdict in her favor. The court erred when it overruled this motion, and the judgment in this case must be reversed.

We have said it was not necessary here to consider the rights of the appellant as a married woman to her earnings. Except when the rights of his creditors are involved there is no question that at the time Herbert Ford with his son conveyed the property in controversy to his wife, the appellant, the husband could convey to Church, trustee, the lots described in the disputed deed, and that Church, trustee, could convey to Mary F. Ford, the wife of Herbert Ford, the same property. The deeds described in the record, but not set out, appear a sufficient conveyance through an intermediary from the husband, Herbert Ford, to his wife, Mary F. Ford, and since we conclude that the same deed was the valid deed of Joseph O. Ford, the appellee, the appellant is seized in fee of the lots in controversy, and therefore was entitled to ask the court to instruct the jury to return a verdict for the defendant below. The evidence was legally insufficient, and in this case it was insufficient in law because it was insufficient in fact. *Metropolitan R. R. Co. v. Moore*, 121 U. S., 570. And again the Supreme Court said: "It is the settled law of this court that, when the evidence given at the trial, with all the inferences which the jury could justifiably draw from it, is not sufficient to support a verdict for the plaintiff, so that such a verdict, if returned, must be set aside, the court is not bound to submit the case to the jury, but may direct a verdict for the defendant." *Improvement Co. v. Munson*, 14 Wall., 442; *Pleasants v. Fant*, 22 Wall., 116; *Herbert v. Butler*, 97 U. S., 319; *Bowditch v. Boston*, 101 U. S., 16; *Griggs v. Houston*, 104 U. S., 553; *Randall v. Baltimore & Ohio Railroad Co.*, 109 U. S., 478; *Anderson County Comrs. v. Beal*, 113 U. S., 227; *Baylis v. Travelers' Insurance Co.*, 113 U. S., 316." *District of Columbia v. Moulton*, 182 U. S., 576, 582.

It was the duty of the court to grant the instruction that the jury should return a verdict for the defendant.

The judgment below must be reversed, with

costs, and the cause remanded to the Supreme Court of the District of Columbia for further proceedings not inconsistent with this opinion. And it is so ordered.

Reversed.

#### Bonds—Validity—Representation.

In the case of the Union Bank of Richmond v. Oxford, etc., Railway Company, decided by the United States Circuit Court of Appeals for the Fourth Circuit, it appeared that an officer of the defendant railroad company was authorized by its directors to sell certain bonds which had been issued to it by a town to aid in the construction of its road, and pursuant to such authority sold them to the president of the plaintiff bank acting on its behalf. Prior to and during the negotiations the officer expressly stated in writing to the purchaser that the bonds were valid and had been so adjudged by a court of the State, and the purchase was made in reliance on such representation. As a matter of fact, the bonds were void for want of power in the town to issue them, and were subsequently so adjudged. The court held that the statement of their validity made as an inducement to the sale was an express warranty, which was binding on the defendant, that they had a valid legal existence as securities, and that the plaintiff was entitled to recover from the defendant thereon the consideration paid therefor.

#### Note Filling—Blank—Purchaser.

The Supreme Court of Indiana held, in the recent case of Bowen v. Laird, that where a note was signed and delivered with a blank space after the word "at" so that the place for payment might easily be inserted, the maker was guilty of negligence, and could not as against a bona fide purchaser set up the defense that the note had been materially altered by inserting in the blank space words making the note payable at a bank. The court said that there was no doubt that the insertion of the words was a material alteration, but added: "The rule seems to be well established that if a person signs and delivers a paper in blank, or partly in blank, as to date, payee, where payable, and the like, and which shows upon its face that such blanks must be filled to complete the paper in accordance with the general character of the instrument, the filling of such blank by the payee with words and figures appropriate and adequate to supply the deficiency is not such an alteration as will invalidate the paper as to one who takes it for value and without notice—provided the insertions leave the note fair upon its face and without marks or evidence to arouse the suspicions of a cautious man."

#### Contracts—Performance—Acceptance—Right to Compensation—Authority of Agent.

In Louisville Foundry & Machine Co. v. Patterson, decided by the Court of Appeals of Kentucky in May, 1906 (93 S. W., 22), it was held that where plaintiff contracted to furnish and erect an elevator in a building, to be paid for when accepted by the architects who had

charge of the erection of the building, but the building and the elevator were destroyed by fire before the elevator was completed or accepted by the architects, plaintiff can not recover on a quantum meruit.

It was further held that under such a contract an agent of the architects, employed to see that the contractor performed his contract on the building, had no authority to act for the architect in the acceptance of the elevator; and also that the fact that the tenants of the building were permitted to use the elevator was not sufficient to show its acceptance by the architects. The court said in part:

"Counsel concede that there can be no recovery on the original contract, and attempt to recover on a quantum meruit, but in our opinion the right to recover upon a quantum meruit is not involved in this case. The facts do not bring it within the rule allowing recovery in actions of that character, and the fact that appellant in his amended petition seeks to recover as upon a quantum meruit can not change the status of this case or make that a quantum meruit which is not one. The case here presented is simply this: Appellant undertook to complete within a certain time an elevator, to be paid for when accepted by the architects. Before it was completed or accepted it was destroyed by fire. The owner of the building derived no benefit whatever from it.

"The fact that the tenants used the elevator did not result in any advantage or profit to him. The elevator was not used by them until after April 1, and on that date their rent commenced, whether the elevator was completed or not. The only issue is, who must bear the loss? and, as the elevator at the time of its destruction was the property of appellant, the loss must fall upon him. It has been ruled in a number of cases that under contracts like the one in this case, where the property has been destroyed before the completion of the contract or the acceptance of the property by the owner, the loss must fall on the contractor (Lawing v. Rintles, 97 N. C., 350, 2 S. E., 252; Richardson v. Shaw, 1 Mo. App., 234; Tompkins v. Dudley, 25 N. Y., 272, 82 Am. Dec., 349)."

#### Note—Unconditional Guaranty.

A promissory note had written on its back the following: "For value received I hereby guarantee the payment of the within note. Demand for payment, protest, and notice of protest waived." In a suit upon this guaranty the signatures to the note and the guaranty were admitted, but the trial court ruled that there was no legally sufficient evidence to entitle the plaintiff to recover. This ruling seems to have been made on the ground that the guaranty was a conditional one, and that as the plaintiff had offered no evidence tending to show either the exhaustion by it of its remedies against the maker of the note before suing the guarantor, or the insolvency of the maker, it could not recover. The Maryland Court of Appeals held (Walter A. Wood Reaping & Mowing Machine Company v. Ascher) that the judgment should be reversed, as the guaranty was not contingent, but was a distinct and unequivocal guaranty of the payment of the obligation.

**Carriers—Duty Towards Passengers.**—While carriers of passengers are not insurers of absolute safety, yet they are bound to exercise the highest degree of care which is consistent with the nature of their undertaking. *United Rys. & Electric Co. of Baltimore v. Wier* (Md.), 26 Atl. Rep., 588.

**Evidence—Res Gestæ.**—In an action against a street railway for injuries caused by collision, statement made by motorman immediately after the accident held admissible. *Cincinnati, L. & A. Electric St. R. Co. v. Stahle* (Ind.), 76 N. E. Rep., 551.

**Guaranty—Construction.**—Where the terms of a guaranty fix the time within which payment shall be made, if the payment is not made as prescribed, no steps need be taken against the principal, nor need his insolvency be shown to fix the guarantor. *Loverin & Browne Co. v. Bumgarner* (W. Va.), 53 S. E. Rep., 1000.

**Negligence—Contributory Negligence.**—Contributory negligence to preclude a recovery must concur with the negligent act or omission of defendant, and proximately contribute to cause the injury complained of. *St. Louis Southwestern Ry. Co. of Texas v. Parks* (Tex.), 90 S. W. Rep., 343.

**Subrogation.**—An administrator who pays for funeral expenses and obtains a judgment on such claims against the surviving husband of his intestate, acquires no greater right than the original creditors to reach exempt property of the husband. *Weaver v. Gray* (Ind. App.), 76 N. E. Rep., 795.

**Malicious Prosecution—Probable Cause.**—That defendant in an action for malicious prosecution in prosecuting plaintiff for alleged destruction of a highway acted in his official capacity was a matter to be considered in determining the question of probable cause. *Skeffington v. Eylward* (Minn.), 105 N. W. Rep., 638.

**Guaranty—Discharge of Guarantor.**—The liability of a guarantor of a note under an absolute guaranty of payment held not affected by the neglect of the payee to enforce a chattel mortgage. *Warder, Bushnell & Glessner Co. v. Johnson* (Mo.), 90 S. W. Rep., 392.

#### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

## Legal Notices.

### FIRST INSERTION.

**Julius A. Maedel, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Jacob Miller, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 10th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 10th day of July, 1906. WILHELMINES MILLER, W. CLARENCE MILLER, 617 C st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,752. Admn. [Seal.] 23-St

**Wm. E. Ambrose, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**Estate of Maggie Harrison, Deceased.**

No. 13,156, Administration Docket.

Application having been made herein for letters of administration on said estate, by B. W. Weaver, creditor, it is ordered this 10th day of June, A. D. 1906, that Mary Cramand Olive Bell, and all others concerned, appear in said court on Monday, the 13th day of August, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WRIGHT, Justice. Attest: M. J. Griffith, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 23-St

**Harry A. Hegarty and Michael J. Keane, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John A. Heenan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of July, 1906. MARY J. HEENAN, 3210 P st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,791. Administration. [Seal.] 23-St

**Chas. W. Clagett, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

**This is to Give Notice** That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Carolina Scheuch, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of July, 1906. CHARLES REPP, Forrestville, Md. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,750. Administration. [Seal.] 23-St

**J. J. Darlington, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Edwin B. Hay, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of July, 1906. GEO. W. EVANS, Dept. Interior. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,774. Administration. [Seal.] 23-St



**Legal Notices.**

**John B. Lerner, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Edwin S. Houston, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 3d day of July, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 10th day of July, 1906. THE WASHINGTON LOAN AND TRUST COMPANY, by Andrew Parker, Treasurer; John B. Lerner, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,067. Administration. [Seal.] 28-St

**S. McNamara and R. S. Huldekoper, Solicitors**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**

**Katherine S. Means, Guardian, et al., Complainants,**  
**v. William A. Rector et al., Defendants. In Equity,**  
**25,550. No. Doc. 56.**

Upon consideration of the report of the trustees filed herein, on the 11th day of July, 1906, reporting their conduct in the premises and the offer of George D. Farr to purchase the property involved herein at and for the sum of forty thousand dollars, according to the terms set out in the said report, it is, this 11th day of July, 1906, ordered that the said trustees be, and they hereby are, authorized and directed to accept the said offer of the said George D. Farr, and to complete the sale according to the terms of the contract set out herein in this cause, unless cause to the contrary be shown on or before the 19th day of August, 1906. Provided a copy of this order be published once a week for four successive weeks prior to said date in The Washington

[Seal] Law Reporter. By the Court: WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 28-St

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of John Linquist, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Thursday, the 9th day of August, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 9th day of July, 1906. G. H. POWELL. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,065. Administration. [Seal.] 28-St

**G. F. Williams and H. M. Packard, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Lizzie L. Meade, Deceased.**  
**No. 13,738. Administration Docket —.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate by Edward W. Jones, executor, and Bertha Gray, executrix, it is ordered this 10th day of July, A. D. 1906, that Madeline Meade (a minor) and all others concerned, appear in said court on Monday, the 13th day of August, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be

[Seal] not less than thirty days before said return day. WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 28-St

**Legal Notices.**

**Wm. D. Hoover, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Mary M. Turner, Deceased.**

**No. 13,751. Administration Docket —.**

Application having been made herein for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by The National Safe Deposit, Savings and Trust Company of the District of Columbia, it is ordered this 9th day of July, A. D. 1906, that Richard Randolph and Mary Wheeler Watson, and all others concerned, appear in said court on Wednesday, the 15th day of August, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return

[Seal] day. WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 28-St

**Thos. G. Hensley, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Benjamin Franklin Hawkes, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of July, 1906. EMMA ALLYN HAWKES, 611 G St. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,695. Administration. [Seal.] 28-St

**Barnard & Johnson, Solicitors for Complainant**  
**Gittings & Chamberlin and T. Percy Myers, Solicitors for Defendants.**

**In the Supreme Court of the District of Columbia.**  
**Ernest L. Schmidt, Complainant, v. Ada G. Farhart**  
**Ross et al., Defendants.**  
**No. 25,522. In Equity.**

**ORDER NISI.**

Ralph P. Barnard, Justin Morrill Chamberlin, and T. Percy Myers, trustees herein, having reported sale of the property, being part of original lot 1 in square 252, beginning for the same at the S. E. corner of said lot and square, and running thence west on G street 60 feet; thence north 38 feet 9 inches; thence east 60 feet to 13th street; thence south 33 feet 9 inches to the place of beginning, in the city of Washington, District of Columbia, to William W. Miller for the sum of \$20 per sq. ft., there being according to the plat 2,525 sq. ft. of ground contained in said property, making the total purchase price \$46,500; it is, this 6th day of July, A. D. 1906, ordered that the said sale be finally ratified and confirmed, unless good cause to the contrary be shown on or before the 7th day of August, 1906. Provided that a copy of this order be published in The Evening Star newspaper and The Washington Law Reporter once a

[Seal] week for three (3) successive weeks before the aforesaid day. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by Fred. C. O'Connell, Asst. Clerk. 28-St

**SECOND INSERTION.**

**Smith Thompson, Jr., Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Edmund Compton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of July, 1906. EMILY A. COMPTON, 220 E. N. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,772. Administration. [Seal.] 27-St

## Legal Notices.

## In the Supreme Court of the District of Columbia.

Joseph H. Byram, S. Norris Thorn, Trustees of the Home Building Association of the District of Columbia, v. The Unknown Heirs, Devisees, and Representatives of Susan Barclay, Peter Stuyvesant, Morris Robinson, and Thomas Barclay, George Barclay, and Anthony Barclay. Equity No. 25,658. Docket 57.

## ORDER OF PUBLICATION.

The object of this suit is to establish of record the title in fee simple of the complainants to all that part of lot two hundred and nine (209), in square twelve hundred and fifty-nine (1259), in the city of Washington, District of Columbia, described as follows: Beginning for the same at the northwest corner thereof and running thence south 122 feet 3 inches to the south line of said lot; thence east 31 feet 1 inch; thence north 10 feet (the width of the alley hereafter reserved); thence east 2 feet 2 inches; thence north 20 feet, more or less, to the south line of lot conveyed to Jared Nicola; thence west 25 feet; thence north 90 feet to line of West street and thence west 8 feet 8 inches, more or less, to the place of beginning; with the right to use a ten-foot alley running along and over the south part of lots 209 and 210 to give an outlet on Montgomery street. Process having been duly issued against the defendants herein and returned "not to be found," although diligent efforts have been made to find them, it is, this 29th day of June, A. D. 1906, ordered that the unknown heirs, devisees, and representatives of Susan Barclay, Peter Stuyvesant, Morris Robinson, Thomas Barclay, George Barclay, and Anthony Barclay, cause their appearance to be entered herein, on or before the first rule day occurring after one month from the date hereof. Provided a copy of this order shall be published twice a month for one month in The Washington Law Reporter and The Washington Times; otherwise this suit will be proceeded with as in case of default. (Signed) HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 27-3t

[Seal]

Everett, Molnar, and Ewing, Solicitors  
In the Supreme Court of the District of Columbia.  
P. G. Scott, Administrator of the Estate of James H. Woodworth, Deceased, and Arthur David, Ancillary Guardian of the Estate of Martha Ann David, an Isane Person, Complainants, v. Samuel A. Putman, Administrator of the Estate of James Smith, Deceased; John A. Smith, Walter Harrington, Frederick W. Steele, and Eliza L. Farrell, Heirs of James Smith, Deceased, and Henry Harrington, Minor, Heir of James Smith, Deceased, Defendants. In Equity, No. 26,227.

The object of this suit is to recover a certain sum of two thousand and forty dollars and ninety-seven cents heretofore wrongfully obtained by the defendant Samuel A. Putman, administrator of the estate of James Smith, deceased, in the county court of Bent County, State of Colorado, from the complainant, P. G. Scott, administrator of the estate of James H. Woodworth, deceased, and to perpetually enjoin the said defendant, Putman, from paying said sum, or any part thereof, to said estate of James Smith, deceased. On motion of the complainant, it is, this 29th day of June, A. D. 1906, ordered that Henry Harrington, one of the defendants in the above-entitled cause, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Times. By the Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 27-3t

[Seal]

Sheehy & Sheehy, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Joseph P. Brass, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 29th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of June, 1906. THOMAS P. BROWN, 580 4 1/2 st. S. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,637. Administration. [Seal.] 27-3t

## Legal Notices.

Leon Tobriner, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Salomon Sugenheimer, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 2d day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 2d day of July, 1906. JENNIE KLEEBLATT, 818 11th st. N. E.; MORITZ BLUMENFELD, 333 H st. N. E.; Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,773. Administration. [Seal.] 27-3t

Henry H. Glassie, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia and the State of Massachusetts, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Anna Lowell Woodbury, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 29th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 29th day of June, 1906. WILLIAM L. PUTNAM, 80 State st., Boston, Mass.; LLEWELLYN JORDAN, U. S. Treasury Dept., Wash., D. C.; M. L. TURNER, 1819 Mass. ave. N. W., Wash., D. C. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,732. Administration. [Seal.] 27-3t

Oscar Luckett, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia and the State of Pennsylvania, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary C. Earle, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 3d day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 3d day of July, 1906. GEORGE EARLE, JR., Surveyor's Office, D. C.; CHARLES T. EARLE, Navy Dept., D. C.; MARY T. EARLE, 121 W. Chestnut ave., Chestnut Hill, Philadelphia, Pa. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,722. Administration. [Seal.] 27-3t

George R. Linkins, Attorney  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.

In re Will of Katherine Frawley, Deceased.  
Administration. No. 13,636.

Michael J. Frawley having made application to the Supreme Court of the District of Columbia holding a Probate Court, for probate and record of the last will and testament of said Katherine Frawley, deceased, and for letters of administration de bonis non cum testamento annexo, to George R. Linkins, it is, this 3d day of July, A. D. 1906, ordered that Patrick Frawley, James Frawley, Kate McMahon, Patrick S. Frawley, Mary McMahon, Ann O'Loughlin, John O'Loughlin, Patrick O'Loughlin, and the unknown heirs at law and next of kin of said Katherine Frawley, deceased, and all others concerned, appear in said court, on Monday, the 13th day of August, A. D. 1906, at 10 o'clock A. M., and show cause if any they have, why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the

[Seal] first publication to be not less than thirty days before said return day. WRIGHT, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 27-3t

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W.

**Legal Notices.****THIRD INSERTION.**

**Tracy L. Jeffords, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Louisa Miller Clark, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 25th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of June, 1906. **BENJAMIN W. CLARK**, 930 N. C. ave. S. E. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,707. Administration. [Seal.] 26-St

**Woodbury Blair, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Woodbury Lowery, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 25th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of June, 1906. **WOODBURY BLAIR**, Corcoran Building. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,663. Administration. [Seal.] 26-St

**Chas. Poe, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Clarence M. York, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of June, 1906. **W. SCOTT TOWERS**, Kellogg Building. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,769. Administration. [Seal.] 26-St

**J. Dawson Williams, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of John Crane, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of June, 1906. **J. DAWSON WILLIAMS**, Berry & Whitmore Bldg., 11th and F sts. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,677. Administration. [Seal.] 26-St

**Oscar Luckett, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Anna M. Devote, also known as Maria A. Devote, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 25th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of June, 1906. **OSCAR LUCKETT**, 344 D st. N. W. Attest: **M. J. GRIFFITH**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,698. Administration. [Seal.] 26-St

**Legal Notices.**

**R. A. Curtin, Solicitor**  
**In the Supreme Court of the District of Columbia.**

**Mary Molloy et al. v. Ellen O'Brien et al.**  
 No. 23,188. Equity Doc. 58.

The object of this suit is to partition by sale the estate of William Santry, also known as William Sauntry, deceased, and to distribute the proceeds to heirs at law and parties entitled thereto. On motion of the complainants, it is, this 25th day of June, A. D. 1906, ordered that the defendants, Margaret Carpenter, John Carpenter, Joseph Carpenter, May Carpenter, and Lillie Carpenter, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive

[Seal] weeks in The Washington Law Reporter before said day. **HARRY M. CLABAUGH**, Chief Justice. A true copy. Test: **J. R. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. 26-St

**Wm. D. Hoover, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Richard Crowther, Deceased.**  
 No. 13,691. Administration Docket —

Application having been made herein for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by The National Safe Deposit Savings and Trust Company of the District of Columbia, it is ordered this 28th day of June, A. D. 1906, that Olympia Crowther and George Crowther, and all others concerned, appear in said court on Wednesday, the 8th day of August, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] **WENDELL P. STAFFORD**, Justice. Attest: **Wm. C. Taylor**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 26-St

**Cole & Donaldson, Attorneys**

**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, the duly appointed collector of the estate of John M. Welty, deceased, has been authorized and directed by the Probate Court of the District of Columbia to perform and discharge all the duties of administrator with the will annexed of said estate, including giving notice to creditors, paying all debts against said estate, and completely settling said estate. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of January, 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand and seal this 27th day of June, 1906. **LATIMER B. STINE**, Collector, Administrator, 140 E street northeast, by **R. Golden Donaldson**, his Attorney. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,313. Administration. [Seal.] 26-St

**Jos. A. Burkart, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Eldridge J. Smith, Deceased.**  
 No. 13,718. Administration Docket —

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Melende H. Smith, it is ordered this 28th day of June, A. D. 1906, that **Andrew C. Smith**, **Theodore C. Smith**, **Mary Barnes**, **Fanny Rascovitich**, **Nora Smith**, **Maud Hayes**, **Fredrick Smith**, **Henry Smith**, and the unknown heirs of the following: **Frank Smith**, **David Smith**, **Lorenzo D. Smith**, and **Sarah Smith Bennett**, and all others concerned, appear in said court on Wednesday, the 15th day of August, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] **WENDELL P. STAFFORD**, Justice. Attest: **Wm. C. Taylor**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 26-St

**Legal Notices.****Nauck & Nauck, Attorneys.****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John Beveridge Smyth, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of June, 1906. THOMAS MILLER, 1616 7th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,674. Administration. [Seal.] 26-St

**Chas. W. Claggett, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John H. Mann, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 27th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of June, 1906. CHARLES F. MANN, 224 10th st. S. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,768. Administration. [Seal.] 26-St

**Stuart McNamara, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Edward E. Taylor, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 27th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of June, 1906. E. EVERETT TAYLOR, 1928 Calvert st. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,785. Administration. [Seal.] 26-St

**Edward S. Bailey, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of William Walter, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of June, 1906. DORA KRAMER, 1424 C st. S. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,629. Administration. [Seal.] 26-St

**John Raum, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Joseph E. Russell, Deceased.  
No. 6852. Administration Docket.**

Application having been made herein for probate of the last will and testament of said deceased, by Alice Henry, it is ordered this 28th day of June, A. D. 1906, that Fannie S. Roby, Joseph L. Russell, Infant, and Mary M. Russell, Infant, and all others concerned, appear in said court on Wednesday, the 8th day of August, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Times once in each of three successive weeks before the return day, herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] day. WENDELL P. STAFFORD, Justice, Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 26-St

**Legal Notices.****Berry & Minor, Solicitors****In the Supreme Court of the District of Columbia,  
Holding an Equity Court.**

Charles H. L. Johnston et al., Complainants, v. Virginia S. Johnston et al., Respondents.  
Equity No. 25,911.

The object of this suit is to make partition by sale of the following-described real estate in the city of Washington, District of Columbia, to wit: Part of original lot numbered one (1), in square numbered one hundred and eighty-four (184), and a part of the ground adjoining the southeast corner of said square, part of original lot numbered sixteen (16), in square numbered one hundred and eighty-four (184), part of original lot numbered two (2), in square numbered four hundred and eighty-four (484), and all of lot numbered seventy-four (74), in W. W. Johnston's subdivision of lots in square numbered two hundred and fourteen (214), belonging to the estate of William W. Johnston, deceased, to divide the proceeds thereof among the parties entitled, and to appoint trustees therefor. On motion of the complainants by their solicitors, Berry & Minor, and Hugh B. Rowland, it is, this 27th day of June, A. D. 1906, ordered that the infant respondent, Violet Johnston, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star Newspaper before said fortieth day. By the Court: WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 26-St

**FOURTH INSERTION.****Edwin S. Bailey, Solicitor****In the Supreme Court of the District of Columbia.**

Edwin W. Spalding, Complainant, v. The Unknown Heirs of Clark Hamill, Deceased, Defendants.  
Equity No. 26,047. Doc. 68.

The object of this suit is to declare title in Edwin W. Spalding to duplicate bounty warrant No. 53,376, the original of which was issued to Clark Hamill on the 14th day of February, 1857, under act of Congress of March 3, 1855. On motion of complainant, it is, this 29th day of May, A. D. 1906, ordered that the defendants, the unknown heirs, next of kin, legatees, or devisees of Clark Hamill, deceased, cause their appearance to be entered herein on or before the first rule day occurring three months after the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for the period of three months in The Washington Law Reporter and The Washington Post. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. June 1, 8; July 6, 18; Aug 3, 10

**FIFTH INSERTION.****J. J. Darlington and W. C. Sullivan, Solicitors****In the Supreme Court of the District of Columbia.  
James Martin v. Jeremiah Boothe et al.****No. 26,260. Equity.****ORDER.**

The object of this suit is to perfect complainant's title to lot 6, in square east of square 664, Washington, D. C. On motion of the complainant, it is, this 6th day of June, A. D. 1906, ordered that the defendant, Jeremiah Boothe, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs, devisees, and allenees of Nathaniel Walker Appleton, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published for three months, once a week for three successive weeks during the first month, and twice a month during each of the two succeeding months in The Washington Law Reporter and The Washington Times. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. Je 8, 15, 22, Jr 6, 13, au 3, 10

Justice blanks of every description for sale at this office.

# The Washington Law Reporter

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WASHINGTON, D. C. - - - - JULY 20, 1906

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### Negligence—Operation of Automatic Elevator.

In *Shellabarger v. Fisher*, decided by the United States Circuit Court of Appeals for the Eighth Circuit (143 Fed., 937), the action was for an injury to a child five years of age. It appeared the plaintiff lived with her parents in an apartment house in which there was an automatic, push-button, electrical passenger elevator used to transport tenants to and from their rooms. For a time the elevator was in charge of an operator, but prior to the accident his services had been dispensed with, and thereafter the tenants themselves operated it. The plaintiff, though forbidden so to do by her parents, entered the car of the elevator and pushed the button, causing it to ascend, and as it did so one of her legs was caught and crushed between the floor of the car and the second floor of the building. The elevator in question was one of a class conceived and introduced to avoid the danger and expense of an operator, and a number of them were in use in apartment houses and other buildings.

They were ordinarily used without operators, but the latter were sometimes employed in business houses during the hours when many people were using the elevators. The elevator on which the accident happened was a perfect one of its type. The car itself had no door, but at the opening in the elevator shaft at each

landing there was a collapsible door of vertical iron rods one-half inch in width and 3 inches apart when the door was closed. The car was immovable unless these doors were closed and locked and none of the doors could be unlocked or opened while the car was moving. There was a push-button at each landing and pressure upon this button would cause the car to come to that landing. One who desired to use it would push back the door, enter the elevator and close the door again. Within the car there was a push-button for each floor and the pressure upon any button would cause the car to move to and stop at the corresponding floor. There was a lever by means of which the car could be stopped between the floors. The lever and all these push-buttons were within reach of the plaintiff, and she knew how to operate the car. The space between the floor of the car and the door of the shaft when closed was 2½ inches and the space between the floor of the car and the second floor of the building was 1½ inches. Several children who were less than 10 years old lived in the apartment house in which this elevator was situated. It was naturally alluring to them and they had sometimes played with and operated it. There was an ordinance in force in Kansas City, which made it the duty of persons using or operating any elevator, except hand-power elevators, to employ a competent person over 16 years of age to operate it, and failure to discharge that duty was a misdemeanor. Upon this state of facts the trial court refused to direct a verdict for defendant, and this ruling was assigned as error. In affirming the judgment, the Circuit Court of Appeals held, as stated in the syllabus by the court:

1. The operation of an automatic, push-button, electrical passenger elevator is not negligence which is actionable by any passenger except a child of years so tender that he can not know the danger and appreciate the risk of his contact with the door or side of the shaft when the car is moving, because a passenger of sufficient maturity and discretion to appreciate this danger and risk would be guilty of contributory negligence if he permitted himself to suffer from it.

2. The operation of such an elevator to carry passengers without an operator in an apartment building where several children under 10 years of age lived, and use it, in a city in which the duty to employ an operator was imposed by ordinance and the failure to discharge this duty was made a misdemeanor, constitutes sufficient evidence of negligence actionable by a child be-

tween 5 and 6 years of age, who was injured while running the elevator by getting her leg caught between the floor of the car and the second floor of the building as the car ascended, to warrant the submission of the question of negligence and the question, whether or not such negligence was the proximate cause of the injury, to a jury.

3. A child of years so tender that he can not understand or appreciate the risk he runs is not chargeable with the duty to avoid it, and hence is not guilty of contributory negligence if he fails to do so. The duty of an infant is commensurate with his maturity and capacity.

4. Owners and operators of passenger elevators owe to their passengers the duty to exercise the highest degree of care for their safe transportation.

5. The violation of a duty of care imposed by a valid ordinance or law constitutes rebuttable evidence of negligence.

#### Street Railways—Wrong Transfers.

In *Cleveland City Railway Company v. Conner*, decided May 22, 1906, by the Supreme Court of Ohio, it is held that a passenger on a street railway who has paid fare and is entitled to ride over another line belonging to the same company, and who, having asked for a transfer ticket over such other line, is given, by mistake of the conductor, one not good over such other line, may, nevertheless, if he has exercised such care about receiving and making use of the transfer ticket as persons of ordinary prudence are accustomed to exercise under the circumstances, lawfully insist upon being carried over such other line without further payment of fare. In such case, if the passenger, without fault on his part, is ejected from a car for refusing to pay fare other than by such transfer ticket, he may recover damages for the tort and can not be restricted to damages for the breach of the contract to carry him. A failure by plaintiff to make a statement or explanation before he was put off the car would not of itself defeat his right to recover, but such fact is admissible in evidence as part of the res gestæ, as bearing upon the question of plaintiff's good faith in accepting and using the erroneous transfer and as affecting the amount of damages.

An exception to the general rule that an appeal does not lie from a decree for costs is applied in *Nutter v. Brown* (W. Va.), 1 L. R. A. (N. S.), 1083, in case of a decree for costs not in the discretion of the court.

## Court of Appeals of the District of Columbia.

EUGENE F. ROBINSON, APPELLANT,

v.

ANDREW B. DUVALL, EXECUTOR, SNOWDEN W. ROBINSON, SEWELL R. DULEY, JAMES S. DULEY, OLIVIA H. DULEY, ET AL. APPELLEES.

WILL CONTESTS; UNDUE INFLUENCE; MENTAL CAPACITY; EVIDENCE; INSTRUCTIONS; WITNESSES.

1. Where there is a total failure of evidence showing the exercise of undue influence upon a testator by the person specifically charged therewith in the caveat, or by any other person, an instruction to the jury to find in favor of the caveatees on that issue is proper.
2. Resentment on the part of a testator against one of his heirs at law, whether well or ill-founded, is not of itself sufficient to invalidate his will, when the testator has the capacity to make a will.
3. In order to avoid a will on the ground of undue influence, the proof of the exercise of such undue influence must be clear; and it is not sufficient that a caveator displeased with a will suspects the exercise of such influence and vainly interrogates the person against whom his suspicion is directed.
4. The refusal of an instruction is not reversible error when its propositions, in so far as they are correct statements of the law, are fully covered by the court in its general charge and in other instructions.
5. Mere eccentricities, prejudices, or resentment against one or more relatives, without more, can not invalidate a will; and the jury are properly so instructed, and that they can be considered only in connection with the other evidence bearing on the question of mental incompetency of the testator at the time the will was made.
6. In a will contest, where the issue is as to the mental capacity of the testator, it is not error to instruct the jury that the testimony of a subscribing witness, other things being equal, is entitled to more weight than that of a witness who was not present at the execution of the will; and an instruction asked by the caveator to the effect that the opinion of a subscribing witness to a will is of no more weight than that of an other equally credible and intelligent witness is properly denied.
7. The fact that a testator, who relies upon his attorney, mistakes the legal effect of the terms of a provision of the will, or that his attorney so erred, is not of itself sufficient to invalidate the will; and a prayer that the court instruct the jury concerning the legal effect of such clause of the will is properly denied.
8. Declarations by one of the caveators as to the mental incapacity of the testator, alleged to have been made on the night of the latter's death, and which were at variance with his testimony at the trial, held admissible only for the purpose of affecting the credibility of the witness, and an instruction so limiting their effect held properly given.

No. 1641. Decided May 11, 1906.

APPEAL by caveator from a decree of the Supreme Court of the District of Columbia, holding the Probate Court, Probate No. 10,978, admitting a will to probate after contest. Affirmed.

*Mr. H. C. Stewart, Mr. Mason N. Richardson and Mr. C. H. Merrilat* for the appellants.

*Mr. E. H. Thomas and Mr. A. B. Duvall* for the caveatees.

*Mr. Justice McCOMAS* delivered the opinion of the Court:

This is an appeal by Eugene F. Robinson, caveator below, from an order of the Supreme Court of the District of Columbia holding a Probate Court, admitting to probate and record in that court a paper writing, dated April 18, 1902, as the last will of James S. Robinson.

The questions to be decided here do not make it necessary to recapitulate all the evidence. The trial was had upon three issues. The first

was as to the execution and attestation of the paper writing of April 18, 1902, as the last will of James S. Robinson. The second was whether at the time of its execution said Robinson was of sound and disposing mind and capable of executing a valid deed or contract, and the third was whether the execution of said paper was procured by fraud, misrepresentation, or artifice, or while said James S. Robinson was under the undue influence of Snowden W. Robinson, or Alvira Robinson, or any other person or persons. Upon all the issues the verdict was for Andrew B. Duvall, executor, Snowden W. Robinson and others, caveatees, the appellees here.

At the trial there was no dispute concerning the execution of the will, the matter involved in the first issue. At the close of the evidence the learned court below instructed the jury to find for the appellees upon the third issue as to fraud and undue influence, and the jury found for the appellees upon the second issue as to the capacity of James S. Robinson to make such will.

James S. Robinson executed this will April 18, 1902, when he was about 70 years of age. On the evening of August 4, 1902, he fell into an areaway in the rear of the home of his brother, Snowden Robinson, at whose house he had lived during the last six weeks of his life. James S. Robinson died a few hours after this accident. In early life he had been a bookbinder in the Government Printing Office and had acquired considerable property. About twenty years before his death he ceased to be employed in the Government service and gave his attention to his property, worth about \$50,000. He was a bachelor, fond of money, and busied himself about a number of small houses which he owned and with the collection of his rents.

The testator had a brother, Snowden, who survived him; a brother, Somerset, who died several years before the testator and without issue; a brother, Bushrod, who died December, 1901, leaving one son, Eugene F. Robinson, the caveator; a sister, Ellen Atz, who died about January, 1902; a sister, Mahala Duley, who died years before, leaving children who survived the testator, and also children of one of her deceased daughters; and another sister, Martha Collins, who had died before the testator leaving children surviving.

By his will of April 18, 1902, the testator left a legacy of \$300 to the Mt. Vernon Methodist Episcopal Church, South; a legacy of \$5 to his nephew, Eugene Robinson, son of Bushrod Robinson, deceased; the residue of his estate was given, one-third to his brother, Snowden Robinson; one-third to the children of his deceased sister, Martha Collins, and one-third to the children of his deceased sister, Mahala Duley; the devises and bequests in each instance to the children of a deceased sister being to the children, their heirs and personal representatives, said children to take per stirpes and not per capita. Andrew B. Duvall was appointed executor and trustee with certain powers.

On the part of the appellant the evidence tended to show that the testator was a peculiar man, whose habits were uncleanly; that he had been very intemperate for the last ten years of his life; that he was penurious, suspicious, and forgetful. Some witnesses were of the opin-

ion that his mind had been unsound during the last year of his life; others that the period of unsoundness included the last five years. Some said he was a very feeble-minded old man, and numbers were of the opinion that during the last year of his life he was incapable of making a valid deed or contract and was very susceptible to influence if unduly exerted.

On behalf of the appellees the testimony strongly tended to show the testator was of sound mind and a shrewd and capable man, not easily influenced, and much evidence was introduced to show that he was thrifty; that he attended to his own business, and that although he had been a drinking man, during the last year and a half of his life, very many witnesses familiar with his life testified either that he was always sober or that he was rarely under the influence of liquor. The testimony of many intelligent witnesses was emphatic that the testator was a man of much intelligence and decided capacity for business, cautious in speech, that he was neat and cleanly in his attire, and that there was no trace of mental unsoundness.

Mr. Michael J. Keane, a witness for the caveator and an attorney, testified that about April 1, 1902, the testator had asked Mr. Keane to write a will for him, at the same time naming the amounts he intended to leave to his kindred, and that he only intended to give five or ten dollars to Eugene Robinson, the testator saying Eugene had been trying to get the better of him as to some property and he intended to cut him off. Mr. Keane prepared the paper. Mr. A. B. Duvall and Mr. Keane were the executors with power to sell. The testator gave a small legacy to the Mt. Vernon Methodist Episcopal Church, south, and gave \$18,000 to Snowden Robinson; the same sum to the children of Mahala Duley, and the same to Martha Collins, per stirpes; the residue to be distributed in the same way. On April 15th the testator called on Mr. Keane and asked for the sheets on which the will had been written, and said he would not execute the will at that time, because he might be doing Eugene an injustice, and thereupon testator destroyed the paper. Mr. Keane said testator was a shrewd business man, that he was very careful in his instructions concerning the will and understood the effect of the will, and Mr. Keane never questioned the testator's capacity to make a will, and had never seen the testator under the influence of liquor.

Mr. Andrew B. Duvall testified that he had known the testator for 20 years, and frequently attended to legal matters for him; that the testator came to his office April 16, 1902, and said he wanted to make his will; that he wanted to leave his property to his kinsfolk excepting Eugene; he wanted to make a legacy to the Mt. Vernon Southern Methodist Church. The testator produced a typewritten draft of a will similar in purport to his oral expression of his purpose, and asked Mr. Duvall if it was necessary to leave something to an heir you want to disinherit. The draft of a will which testator produced had such a provision, and Mr. Duvall said it was just as well to put such a provision into the will. Testator said his property consisted of real estate and was unincumbered, and suggested that it would be better that the property be held together by a trustee for several years



in order to work off the trusts and handle the property to an advantage, and after discussing the matter, Mr. Duvall wrote into the will he prepared the trusts, the direction that the executor and trustee should hold the property for three years unless exigencies required its sale sooner. The testator told Mr. Duvall that one of his nieces, a child of his sister, Mrs. Duley, had died leaving children and he named them, and he wanted to know if the provision he had in the draft of a will he produced, and which Mr. Duvall embraced in the final will, was sufficient to cover that, and Mr. Duvall advised him that as it was phrased in the draft which Duvall had prepared, the will would provide for the children of that niece or any other niece or nephew who might die leaving children. The testator said his only purpose in making the will, except as to the legacy to the church, was to give the nominal legacy to Eugene, and that otherwise he wanted his property to go as it would go according to law. The draft the testator gave Mr. Duvall contained the name of Mr. Keane along with Mr. Duvall as executor and trustee, and the testator said Keane was a young lawyer friend of his. Mr. Duvall called in George, his stenographer, to whom he dictated the will, and the testator read the typewritten copy which testator said appeared to be right. Mr. Duvall gave instructions as to the execution of the will, and the testator paid Mr. Duvall his fee and took a receipt therefor. On April 18th testator returned to Mr. Duvall's office and said that he had concluded that two years was long enough for the duration of the trust, and Mr. Sinclair this time rewrote the paper. After it was finished testator said he wanted to execute the will, and Mr. Duvall's three assistants witnessed the will, and at testator's request Mr. Duvall put the will in his safe and gave a receipt therefor.

In March of the same year the testator had called upon Mr. Duvall. He appeared disturbed about a letter from Henry Stewart concerning the debts of his deceased sister, Mrs. Atz, and said he could not understand how this sister could have been indebted to his brother, Bushrod Robinson, to the amount of \$3,800, as appeared by a note held by Stewart as executor of the estate of Bushrod Robinson, and said that he had told Stewart there was something wrong about it, and unless Eugene Robinson, the son of Bushrod Robinson, fixed the matter satisfactorily, Eugene would be the loser by it. The testator called upon Mr. Duvall before and after the time of the execution of the will, and on every occasion he was sober. Once or twice Mr. Duvall had seen the testator a little under the influence of liquor, and on such occasions he would defer the transaction of business, but Duvall had never seen the testator drunk, and testified that at all times the testator's mind was sound in the opinion of the witness. George, Sinclair, and Schultdt, the witnesses to the will, two of whom were acquainted with the testator, testified concerning the testator's visits and the execution of the will, and also to his sobriety on that occasion and to the soundness of his mind then and at all times to the extent of his knowledge.

There are eleven assignments of error.

First. It is claimed in the first and second assignments of error that the court erred in directing

the jury to find a verdict in favor of the caveatees on the issue of fraud and undue influence. At the trial there was no evidence of fraud or undue influence on the part of Snowden W. Robinson, or of Alvira, his wife. The appellant called as a witness Susan Collins, one of the children of the testator's deceased sister, a caveatee under the will, who, in substance, testified that during the last year of the testator's life she had seen him twice a week; that in February and March, 1902, she had talked with him about Mrs. Atz's property and Bushrod Robinson's interest therein, and that she at one time held a note for \$300 against Mrs. Atz's property, and at witness' request her uncle, Bushrod Robinson, had assumed the payment of that note, and about this she talked with her uncle, the testator; she had never spoken to him about Mrs. Atz's note for \$3,800 given to her uncle, Bushrod Robinson, because she never had knowledge of it. About March, 1902, the testator talked to her about this \$3,800 note, after Stewart had written testator concerning it. The testator was grieved and hurt and the witness surprised to hear of it, for she had never known her uncle Bushrod to have given money to her aunt; that the witness had told the testator that her uncle Bushrod had paid for her aunt the \$300 note some years before, and recurred to it only to discuss the \$3,800 note.

For months before the testator died he had told witness he was going to make a will, and during April he spoke of it every time he saw her, and then said I am going to leave Eugene out; I have repeatedly sent for Eugene to come to see me and talk over business affairs in regard to your aunt Ellen's property and he never would come, and the witness said, wait, probably he will come, and later that she told him (Eugene) to go visit the testator, and that she went to see Eugene one Sunday afternoon and asked him to call on her uncle James some time, as he was very anxious to see Eugene and talk to him; that his uncle felt hurt about him, and before she left she made him promise that he would soon go to see his uncle. She denied she had ever asked Eugene to speak to his uncle James about making a will though Eugene later testified that she had so said, and that he had told her that she herself should ask uncle Jim about the will. She testified that on April 16th her uncle said he had made his will. Years before this witness had lived with her uncle James two years, and thereafter she usually visited him twice a week and kept his clothes in repair and read to him and he would read to her and they would talk together about his travels. The testator told her he intended to leave the Mt. Vernon Church something, but had never told her anything else concerning the contents of the will and she had never asked him to leave her anything; that he had never gave her any money except on one occasion a five-dollar gold piece, and that she never exercised any influence over him at all. She insisted that three or four times she persuaded her uncle to wait, and Eugene would come to see him, and that Eugene came to see her uncle about the release of a deed of trust, and her uncle was pleased that Eugene came at last, saying that he had come to ask the uncle to do him a favor; and she remembered that her uncle told her Mr. Keane had written

the will, and later she knew it was destroyed and that Mr. Duvall had made the new will. It is to be observed that Susan Collins did not live in the house of the testator; that she was employed in the Government Printing Office and had no opportunity to exclude others from access to her uncle, and that she was not favored in the testator's will and received the same benefits given to all the children of the testator's deceased sister, Martha Collins, and no more. She did not procure either Mr. Keane or Mr. Duvall to prepare the testator's will.

Eugene Robinson rarely visited his uncle. From 1896 until June, 1902, the testator boarded with Mrs. Mary E. Diver, who testified that sometimes Snowden Robinson called to see testator on Sunday, but that she did not know Eugene Robinson, and Olivia Duley testified the testator claimed that Eugene never treated him with respect and would not speak to him on the street, and for that reason testator said that when he made a will he would leave Eugene out. True, Eugene Robinson testified he had three times taken his uncle home when he was intoxicated, that his uncle was slovenly, and that for four years he believed his uncle was of unsound mind, and that the caveator frequently visited the testator who was very friendly.

The learned court below was justified in instructing the jury to return a verdict in favor of the caveatees upon the third issue. There was an utter failure of evidence showing the exercise of undue influence by Snowden Robinson, or by Alvira, his wife, the persons specifically charged in this issue, and a failure to show that Miss Susan Collins had sought to influence or had unduly influenced the testator concerning the disposition of his property. The Supreme Court says:

"In such actions the testator can not be heard, and very trifling matters are often pressed upon the attention of the court or jury as evidence of want of mental capacity or of the existence of undue influence. Whatever rule may obtain elsewhere, we wish it to be distinctly understood to be the rule of the Federal courts that the will of a person found to be possessed of sound mind and memory is not to be set aside on evidence tending to show only a possibility or suspicion of undue influence. The expressed intentions of the testator should not be thwarted without clear reason therefor." *Beyer v. Le Fevre*, 186 U. S., 114, 125, etc. See *Leach v. Burr*, 188 U. S., 510, 513; *Stant v. American Security & Trust Co.*, 23 App. D. C., 29; 32 Wash. Law Rep., 38; *Manogue v. Herrell*, 13 App. D. C., 455; 26 Wash. Law Rep., 775. There was evidence that the testator was displeased with the caveator. Such resentment often leads a testator to cut off a legatee, but where the testator has the capacity to make a will, it is his will, whether the resentment be well or ill-founded; the testamentary paper is not invalidated on account of it. See *McLane's estate*, 21 D. C., 581. There was no evidence of such importunity as would deprive the testator of his free agency; indeed, no evidence that Susan Collins sought to exercise such undue influence. It is true that such importunity pressed upon a testator too weak to resist will render the signed instrument not the testator's free and unconstrained act. Such undue influ-

ence is closely allied with fraud, and when resorted to by a crafty person its presence often becomes exceedingly difficult to detect, yet it is not enough that a caveator displeased with a will suspects the exercise of such undue influence and vainly interrogates the caveatee whom he suspects. In this instance the denial of Susan Collins is convincing. Her testimony is credible. No other witness, indeed, no circumstances contradict her statement of her innocence. Apart from the exclusion of the caveator, the estate of the testator was given to his kindred in the manner one would ordinarily expect, and Susan Collins received no benefit under the will except such as came to her as one of the children of the testator's deceased sister, Martha Collins. Usually the direct result of undue influence is accompanied by some beneficial provision in the will favoring the person charged with such exertion of undue influence. The learned court below correctly instructed the jury to find for the caveatees upon the third issue.

Second. The third assignment of error is that the court erred in saying in the presence of the jury that the original and amended and supplementary petitions filed in this case in the Probate Court did not tend in the slightest to impeach the witness, Mr. Duvall, then upon the stand. There is no merit in this objection. We have carefully examined these papers and the related evidence in the record relied on, and fully agree with the learned court below that the papers did not tend to impeach Mr. Duvall. If, however, this casual comment might have influenced the jury, the learned court below, at the conclusion of the testimony, and in beginning his charge to the jury, sufficiently cautioned the jury in such terms that the appellant had no reasonable ground to complain. The court said:

"Gentlemen of the jury, at the outset of the remarks which I shall make to you I wish to say that these instructions are given to you by the court for your guidance as to the application of the principles of law to the testimony which has been submitted to you, but that you are the sole judges of the facts, and it is your special province to judge of the credibility of the witnesses and the weight to be given to the testimony as tending to prove the facts alleged by either party to this controversy. And if I have manifested in any way any opinion that I may have as to the facts, it has been inadvertent and you will disregard it. I do not know that I have, but if I should have, by any act or statement of mine, indicated any opinion I may have on the facts, you should ignore it."

Third. The assignments of error from four to ten inclusive relate to certain instructions granted and refused by the court below. These instructions are too long and too numerous to be recited here.

The court did not commit reversible error in refusing the appellant's fourth instruction. So far as it was a proper statement of the law, the court, in its general charge and in other instructions, fully covered its propositions in the general charge and in other instructions. The prayer itself was confused and inconsistent and was properly rejected.

The court did not commit error in granting

the eleventh prayer of the caveatees. The jury were cautioned that they could not find the testator incompetent to make a will, if they found he was prejudiced against some of his relatives or had any of the eccentricities mentioned in the evidence. Mere eccentricities do not justify setting aside a will on the ground of mental incompetency, and the instruction added that the evidence upon this point was to be considered only in connection with all the other evidence bearing upon the mental incompetency of the testator at the time of the execution of the will. A testator may be eccentric, opinionated, peculiar, and yet be a shrewd man of business, capable of managing his own affairs and disposing of his property by deed or will. Mere eccentricities, prejudices, or resentment against one or more relatives without more can not invalidate a will. See *Turner v. Hand*, 3d Wallace, Jr., 88, 133.

The court below committed no error in refusing the eleventh prayer of the caveator and in granting the twelfth prayer of the caveatee which stated that the opinion of a subscribing witness to a will is of no more weight than the testimony of an equally credible and intelligent witness, while the twelfth prayer of the caveatee stated that the testimony of a subscribing witness, other things being equal, is entitled to more weight than that of a witness who was not present at the execution of the will. The testimony of these two different classes of witnesses on the subject of mental capacity are not precisely on the same footing as to value. The attesting witnesses are considered in the law as placed round the testator to protect him against fraud in the execution of his will and to judge of his capacity, and it is their duty to inform themselves of his capacity before they attest his will, and therefore these witnesses are permitted to testify as to the opinions they formed of the testator's capacity at the very time of his executing his will. The mere naked opinions of other persons not occupying the position of medical men are inadmissible in reference to the mental capacity of the testator whose will may be contravened. Some such witnesses may have such knowledge as may make their opinions of testamentary capacity admissible, but such witnesses lack the opportunity given to the subscribing witnesses to form an opinion of the testator's capacity at the moment when he executed his will. See *Berry will case*, 93 Md., 594; *Townsend v. Townsend*, 7 Gill, 27; *Williams v. Lee*, 47 Md., 225. Appellant's counsel insist the phrase, "the testimony of such witnesses, *other things being equal*, is entitled to more weight" than that of witnesses not present at the execution of the will is very objectionable. They argue that a great many meanings may be given to the phrase "other things being equal." In this collocation it meant only to contrast the two classes of witnesses, subscribing and non-subscribing, yet equally credible, intelligent, and disinterested.

The twelfth prayer of the caveator which asked the court to instruct the jury concerning the legal effect and import of one clause in the disputed will was properly rejected by the court. The attorney who prepared the will had instructed the testator that if Mrs. Shipley, daughter of Mrs. Duley, died before the execu-

tion of the will, leaving children, such children would take under the terms of the will the attorney had drawn. It would mislead the jury to have them consider this clause apart from the residuary clause, and yet the caveator asked the court to instruct the jury that as matter of law the children were not entitled to any portion of the testator's estate, and that if such children were the natural objects of his bounty, and the testator did not have mind sufficient to recall them, "*and for that reason alone*" failed to provide for them, then the disputed paper is not a valid deed.

The undisputed testimony was that Mr. Duvall instructed the testator that under the language of the will the children of his deceased niece, a daughter of Mrs. Duley, would take per stirpes. If Robinson, who relied upon his attorney, should mistake the law, or if his attorney so erred, the will would not necessarily be invalid. We are not now prepared to say that if a man 70 years old should happen to omit any provision for one family of grandnieces and nephews, that such omission would invalidate a will. We refrain from considering the legal effect of this devise because the only issue the jury had to decide was whether the writing was the will of the testator and the court was not called upon to construe the will and to instruct the jury whether its provisions were legal or not. *Lilly v. Tobbein*, 103 Mo., 487. This prayer was otherwise confused and misleading.

In the fourth prayer of the caveatees the court rightly instructed the jury that there was no evidence in this case justifying a finding that the will in controversy was the result of any insane delusion. There was no evidence whatever to induce the learned court below to reject this instruction, and appellant's counsel only asked for its rejection upon several extracts from the answers of two medical men to the hypothetical questions put by the caveator's counsel. There is nothing in the record upon which to base such an assignment of error.

The last assignment of error relied upon by the appellant in his objection to the court's instruction that if the jury found witnesses made different statements out of court from what they made on the witness stand, that the jury are entitled to consider such evidence in weighing the testimony of such witnesses, but "they should not allow such evidence to have any influence in establishing any alleged facts contained in said statements so made when the witnesses were not testifying in this case, and whether made verbally or in writing, because such statements can only be hearsay and inadmissible unless for the purpose of affecting the credibility of the said witnesses." The proposition is not clearly expressed nor accurately limited to certain witnesses. The appellant's counsel correctly insists that it related to certain declarations of Snowden Robinson, a caveatee. Snowden Robinson was a witness and in his opinion his brother had capacity to make a deed or will. The caveator was permitted to call two witnesses who gave testimony tending to show that on the night of the testator's death, Snowden Robinson, the caveatee, had expressed an opinion of his brother's mental incapacity at that time. Contradiction was admitted by the court as

affecting the credibility of the witness. Appellant's counsel now insist that such expression of opinion was an admission which the jury should have considered in deciding upon the issue against all the caveates. The court below ruled as the Supreme Court had ruled in *Ormsby v. Webb*, 134 U. S., 47, 65:

"The second and third exceptions refer to the exclusion of testimony tending to show, by the declaration of Mrs. Stewart, one of the principal legatees, made about or after the date of the execution of the will, that she had knowledge at that time of the execution of the will and its provisions. The exclusion of the evidence was right. The proper foundation being laid, the declarations of Mrs. Stewart could have been proved for the purpose of impeaching or discrediting her testimony as a witness for the caveates. But such declarations, not under oath, whenever made, were not competent for any other purpose upon the trial of the issue as to competency to make a will. She was not the only legatee who was interested in the issues to be tried."

We find no error in the rulings of the learned court below. The order and decree of the Supreme Court of the District of Columbia, holding a Probate Court, admitting the paper in question to probate and record as the last will and testament of James S. Robinson, must be affirmed, with costs, and it is so ordered.

Affirmed.

KATHERINE KEHAN, APPELLANT,  
v.

THE WASHINGTON RAILWAY AND ELECTRIC COMPANY.

CARRIERS OF PASSENGERS; PERSONAL INJURIES; INSTRUCTIONS; EVIDENCE; RES GESTÆ.

1. In an action for personal injuries received by the plaintiff while attempting to alight from one of defendant's cars, the charge of the trial court held erroneous, because of its failure to define with necessary particularity the duties and obligations of a common carrier to its passengers, and a judgment in favor of defendant reversed.
2. At the trial in the court below defendant was permitted, over plaintiff's objection, to show that immediately after the accident her brother (since deceased), who had been riding with her and had preceded her in alighting from the car, said to her, "Are you hurt? Why did you get off before the car stopped?" To which she replied, "I didn't; the car stopped and started." The brother then said, "No, the car had not stopped," and she said, "Well, I thought the car had stopped." Held, that the declarations of the brother, although made immediately after the accident, were mere expressions of opinion relating to a past occurrence, and not a part of the res gestæ, and the admission of such declarations was error. Per Mr. Chief Justice Shepard and Mr. Justice Duell. Mr. Justice McComas contra.

No. 1651. Decided June 5, 1906.

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 48,254, entered upon a verdict in an action for personal injuries. Reversed.

Mr. Rossa F. Downing, Mr. G. A. Berry, and Mr. J. V. Coughlan for the appellant.

Mr. C. A. Douglass and Mr. George P. Hoover for the appellee.

Mr. Justice McCOMAS delivered the opinion of the Court:

This is an appeal to recover damages

for personal injuries to the plaintiff, caused by the alleged negligence of the defendant, while the plaintiff, a passenger, was alighting from a street car of the defendant at the intersection of Ninth street and "F" street northwest, in the city of Washington. The injuries complained of were external bruises and internal injuries. The declaration alleges that while proceeding in the defendant's car in a southerly direction on Ninth street, the defendant stopped its car for the purpose of allowing passengers to alight therefrom at the intersection of the streets just mentioned, and that when the car had come to a full stop and while the plaintiff was in the act of alighting therefrom, but before she had an opportunity to reach the ground in safety, the said car was by the negligence of the agents and employees of the defendant in charge thereof suddenly started forward, and by reason of such negligence the plaintiff was thrown violently to the ground and was severely injured, as described in the declaration. The defendant pleaded not guilty, and the verdict and judgment were for the defendant, and the plaintiff has appealed.

The plaintiff sat on the east side of the aisle in the middle of the car, and next to the aisle, and her brother sat on the outside of the same seat. When the car came to a full stop, she said her brother started to get off. She crossed the aisle of the car and as she put her foot on the running-board the car gave a sudden jerk forward and threw her to the ground. Her brother and a fellow passenger, Farley, picked her up. After they had picked her up and she had regained consciousness, the conductor presented a paper and asked her to sign it. This she refused to do. When the conductor asked her whom she blamed for the accident, she replied it was his fault. He did not give her time to get off. She heard no bells or signals. The plaintiff and two physicians testified concerning the serious injuries she sustained. Farley, her fellow-passenger on the same car, fully corroborated the plaintiff's testimony. The motorman, Gates, testified that his attention was attracted to the accident just after the plaintiff fell, that the car had just come to a full stop and it had not stopped before the accident. When he looked back he saw the policeman and the conductor, the latter with a paper in his hands getting names. The motorman stayed there a couple of minutes before he looked back. The conductor, Jenkins, confirmed the motorman's testimony and further testified to things said, to which Gawler also testified. Gawler, the police officer, said that he saw the plaintiff standing on the running-board of the moving car and that before it stopped she stepped off backward and fell. Jenkins had testified that while the plaintiff was being picked up he heard her brother say, "Are you hurt? Why did you get off the car before it stopped?" and Gawler said he heard her brother say, "Why didn't you wait until the car stopped? Why did you want to step off the car before it stopped for?" and she replied, "I thought it had stopped." These statements of Jenkins and Gawler were admitted over the objections of plaintiff's counsel. The remaining testimony tended to contradict the witnesses on either side before mentioned.

Four assignments of error relate to the instructions granted and to a part of the oral charge of the court concerning the burden of proof in this case. In *Railway Company v. Svedborg*, 20 App. D. C., 549; 30 Wash. Law Rep., 823, this court said: "The plaintiff was a passenger on the defendant's car, and, as such, was entitled to the highest degree of care and caution on the part of the carrier for her protection against injury. It is true to make out a *prima facie* case, the burden of proof of negligence on the part of the defendant, as to the cause of the injury, was upon the plaintiff, but this burden is changed in the case of a passenger by showing that the accident occurred that caused the injury to the plaintiff while the latter was a passenger. The burden of proof is then cast upon the defendant to explain the cause of the accident, and to show, if that be the defense, that the plaintiff was negligent, and that her negligence caused or contributed to the production of the injury. *Inland and Seaboard Coasting Co. v. Tolson*, 139 U. S., 557. The happening of an accident to a passenger *while on or getting off a vehicle*, under the control of the carrier, and which in the usual and ordinary course of things would not happen with proper care, casts the burden upon the defendant of explaining the circumstances of the accident so as to relieve itself from liability. This burden upon the defendant is sufficiently discharged, however, by showing that the injury complained of was caused by the plaintiff's own negligence or want of care. *Dougherty v. Mo. R. R. Co.*, 81 Mo., 325; *Murphy v. St. L. & S. Ry. Co.*, 43 Mo. App., 342; *Murphy v. C. I. & B. R. R. Co.*, 36 Hun, 199; *Consol. Traction Co. v. Thalheimer*, 59 N. J. L., 474. There are many other cases to the same effect.

The testimony in the case cited and in the case we are here considering shows the two cases are in the same class. The plaintiff and Farley testified that when the car came to a full stop the plaintiff's brother started to get off, and she crossed the aisle of the car and as she put her foot on the running-board the car gave a sudden jerk forward and threw her to the ground. The motorman and the conductor both testified that the car had not stopped before the accident occurred, and Gawler testified that he saw the plaintiff standing on the running-board of the moving car and that before it stopped she stepped off backward and fell. In order to recover in such a case the plaintiff must show negligence in the defendant. If the plaintiff be a passenger this is done *prima facie* when the plaintiff shows that the accident occurred. When the plaintiff proves the occurrence of the accident, the defendant must answer that case, from all the circumstances of exculpation disclosed by the evidence, and the jury must determine whether the relation of cause and effect exists between the accident and the exonerating circumstances. In the case last cited, this court also said:

"These questions of the burden of proof, and the presumptions resulting therefrom, have been very fully and clearly considered by the Supreme Court of the United States in several cases, the last of which being the case of *Gleeson v. Va. Midland R. R. Co.*, 140 U. S., 435, a case taken up from this District. That was a case

where the plaintiff occupied the position of a passenger, and was injured by reason of an obstruction on the road, caused by a landslide, and the defense was that the cause of injury was the act of God, and not that of the defendant. But the defense did not prevail. In the opinion of the court, delivered by Mr. Justice Lamar, it is said: 'Since the decision in *Stokes v. Saltonstall*, 13 Pet., 181, and the *New Jersey R. & Transp. Co. v. Pollard*, 22 Wall., 341, it has been settled law in this court that the happening of an injurious accident in passenger cases, *prima facie* evidence of negligence on the part of the carrier, and that (the passenger being himself in the exercise of due care) the burden then rests upon the carrier to show that its whole duty was performed, and that the injury was unavoidable by human foresight. The rule announced in those cases has received general acceptance, and was followed at the present term in *Inland and Seaboard Coasting Co. v. Tolson*, 139 U. S. 551.'" *Railway v. Svedborg*, supra, 550.

The rule of law announced in the case last cited was repeated recently in the case of *The Washington, Alexandria & Mt. Vernon Railway Company v. Chapman*, 34 Wash. L. R., 30.

The first prayer granted by the court in behalf of the defendant departed from this rule, for that prayer said that:

"In order for the plaintiff to be entitled to a verdict in this case the jury must be satisfied on consideration of all the evidence and by the preponderance of the evidence, that the car fully stopped at the corner at 9th and F streets for passengers to alight, and that while plaintiff was in the act of alighting, the car was started forward and threw her to the ground whereby she was injured, and unless these facts are established by preponderance of the evidence, the verdict should be for the defendant."

It is not necessary to discuss the third prayer nor the oral instruction of the learned court below. It is sufficient to say that the court's charge did not properly explain the burden of proof in this case to the jury. The jury were not accurately instructed that the plaintiff was a passenger on the defendant's car, entitled to the highest degree of care and caution on the part of the carrier; that to make out a *prima facie* case the burden of proof of negligence on the part of the defendant as the cause of the injury was upon the plaintiff; that this burden is changed in the case of a passenger when it has been shown that the accident which caused the injury occurred while the latter was a passenger, and that the burden of proof is then cast upon the defendant to explain the cause of the accident and to show, as the defense sought to show in this case, that the plaintiff was negligent in alighting from the car, and that her negligence caused or contributed to the happening of the injury of which she complained. The judgment of the court must therefore be reversed.

Another assignment of error relates to a question we should consider, since it may arise upon the next trial of this case. The plaintiff upon cross-examination had been asked if her brother, just about the time he was picking her up from the ground, did not ask her, "Why did you step off before the car stopped?" She replied, "He

did not," and again she was asked if she had not then answered, "The car had started again," whereupon her brother replied, "No, it had not." The plaintiff emphatically denied these things, but admitted that her brother said, "If you had only waited a little longer." All this occurred without objection from the plaintiff's counsel. Later, Jenkins, the conductor, testified that immediately upon seeing plaintiff fall he went to her as she was rising to her feet by the assistance of Farley, and then Jenkins heard her brother say, "Are you hurt? Why did you get off before the car stopped?" And the plaintiff replied, "I didn't; the car stopped and started." Her brother responded, "No, the car had not stopped." And she replied, "Well, I thought the car had stopped." Gawler substantially agreed with Jenkins about this brief conversation, and in the case of each witness the plaintiff's counsel objected, and when the court admitted this testimony, excepted to its admission.

First Wharton on Evidence, section 259, says substantially that the *res gestæ* are those circumstances "which are the undesigned incidents of a particular act, and which are admissible when illustrating such act, although separated from the act by a lapse of time more or less appreciable. They may be sayings and doings of one absorbed in the event, whether participant or bystander, but they must be necessary incidents of the litigated act in the sense that they are emanations of such act and not produced by the calculated policy of the actors. Such are admissible through hearsay; it is the act that creates the hearsay, not the hearsay the act." And Mr. Wharton says: "Exclamations of bystanders, if instinctive, are in like manner admissible."

A case in Pennsylvania appears very like that we are here considering. A witness had testified that immediately after the accident, and before the man injured had been lifted from the tracks, Dalton, the lineman, said that he had run ahead to pull him off the track and did not have time to do it. This testimony, on motion, was stricken out, and an offer to prove that the motorman, within two minutes of the occurrence of the accident and while he and other employees of the company were in charge of the injured person, had said that he could have stopped the car in time, but that he supposed that Dalton would have had the man removed from the track before the car reached him, was rejected. This testimony relating to Dalton's statement appears to have been stricken out for the reason that he was not employed in the operation of running the cars, and that relating to the statement of the motorman to have been rejected for the reason that it was too remote from the occurrence to be admissible as part of the *res gestæ*.

Neither ground was well taken. To make his declaration admissible as part of the *res gestæ* it was not necessary that Dalton should have been in the employ of the company for the purpose of running its cars, or for any purpose. His acts were a part of the occurrence, and they could have been proved if done by an entire stranger. His declarations made at the time explained the nature of his acts and the acts of others which together made up the

whole occurrence, under investigation. The declaration of the motorman, of which proof was offered, was separated in time two minutes only from the infliction of the injuries. It emanated from the act, it was unconsciously associated with and stood in immediate casual relation to it. The occurrence had not yet ended. He was not speaking as the narrator of a past event, but as a participant in an uncompleted one. Both of these declarations clearly come within the comprehensive definition given in Wharton on Evidence, section 259 (2d ed.): "The *res gestæ* may therefore be defined as those circumstances which are the undersigned incidents of a particular litigated act and which are admissible when illustrative of such act. These incidents may be separated from the act by a lapse of time, more or less appreciable. They may consist of speeches of any one concerned, whether participant or bystander; they may comprise things left undone as well as things done. Their sole distinguishing feature is that they should be necessary incidents of the litigated act; necessary in this sense, that they are part of the immediate preparations for or emanations of such act, and are not promoted by the calculated policy of the actors." *Coll v. Easton Transit Co.*, 180 Pa. St., 625.

Mr. Wigmore in his recent work on evidence, in discussing the admission of "spontaneous exclamation" (*res gestæ*), says the utterance must have been *before there has been time to contrive and misrepresent*, that the statements need not be strictly contemporaneous with the exciting cause, that there can be no definite and fixed limit of time, that the utterance must relate to the circumstances of the occurrence preceding that the declarant must appear to have had opportunity to observe personally the matter of which he speaks. He concludes, that any one possessing such qualifications would be a competent speaker. In particular, a bystander's declarations would be admissible. In a few courts, the declarations of a mere bystander have been excluded, but in the greater number no such discrimination is made. 3d Wigmore on Evidence, sections 1750 to 1755.

Whether the plaintiff's brother be regarded as a non-actor or a bystander, the brief and excited exclamation in this case are surely within Mr. Wigmore's rules.

It is apparent that these declarations can not be excluded without overruling the statement of the doctrine of *res gestæ* so clearly stated by Chief Justice Alvey, speaking for this court in *McLane's case*.

In *Railroad Company v. McLane*, 11 App. D. C., 222; 25 Wash. Law Rep., 485, such a conversation between an injured child and his mother five or ten minutes after his serious injury were admitted. In that case objection was only made to the declarations of the injured boy, who soon after died. This court said: "It is certainly true that it is not always easy to determine when declarations having relation to an act done, and professing to explain or account for such act, are admissible as part of the *res gestæ*. There is great contrariety in the decisions upon the subject; but the tendency of recent decisions is to extend and liberalize the principle of admission, and declarations and statements are now, by many recent decisions of high authority, ad-



missible that would formerly have been excluded. The application of the principle of admission is largely dependent upon special circumstances of each case as it occurs. In the English decisions, where the principle has been applied with the greatest strictness, it was held by Lord Holt, in the case of *Thompson v. Trevanion, Skin.*, 402, and since repeated and approved in the case of *Rex v. Foster*, 6 C. & P., 325, that a statement made by a party injured immediately after he was knocked down, as to how the accident happened, was admissible. The declarations, however, to be admissible, must be the natural emanations or promptings of the act or occurrence in question, and although not exactly concurrent in point of time, yet if they were voluntarily and spontaneously made, and so nearly contemporaneous as to be in the presence of the transaction which they illustrate and explain, and were made under such circumstances as reasonably to exclude the idea of design or deliberation, such declarations are admissible as part of the *res gestæ*." *Railroad v. McLane*, *supra*, 222, 223.

In the present case the plaintiff and her brother, who has since died, were fellow-passengers on the car. They both were alighting from it about the same time. The brother and Farley helped the plaintiff to arise after she had fallen, and immediately thereafter it is testified that this brief interchange of words between the plaintiff and her brother was heard by Jenkins and Gawler. Her brother may well be considered an actor in this transaction, and we think that the testimony is admissible.

The *Railroad Company v. Collins*, 1 App. D. C., 389; 21 Wash. Law Rep. 811, differs from this case. There the declaration held not admissible as part of the *res gestæ* was a statement of a transfer agent who was not an actor in the occurrence, who was a looker on and had nothing to do with it, and whose statement was a narrative only of a past transaction. This court said of the declaration in that case: "It was not a spontaneous outburst incident to the occurrence or illustrative of any part of it."

We need not consider the remaining exception which relates to a leading question permitted by the court. This matter was within the discretion of the trial court, discretion which should always be carefully exercised, but which we will not review upon this appeal.

The judgment in this case must be reversed, with costs, and the cause remanded to the court below for further proceedings not inconsistent with this opinion, and it is so ordered.

Reversed.

Mr. Chief Justice SHEPARD (with whom concurring Mr. Justice DUELL) concurring.

We concur in reversing the judgment in this case for error in the charge of the court, because of its failure to define with necessary particularity the duties and obligations of a common carrier to its passengers. We do not concur in the opinion that the declaration of the plaintiff's brother made immediately after the accident, were admissible as part of the *res gestæ*. He was no more a party to the actual occurrence than were other passengers on the same car, and the fact that he happened to be the brother of the plaintiff does not differentiate him from other passengers. His declaration was not an

involuntary exclamation made during the occurrence. It was an expression of opinion relating to a past occurrence, and not, therefore, what is called part of the *res gestæ*, although made within a few moments thereafter.

We think it falls within the principle controlling the case of *Metropolitan R. R. Co. v. Collins*, 1 App. D. C., 383, 390; 21 Wash. Law Rep., 811. The judgment in that case was reversed, because the plaintiff was permitted to introduce the declaration of the transfer agent or car starter who stood near by in performance of his duty, and immediately after the accident made the declaration that the conductor had started the car prematurely and without his authority.

Referring thereto, the court said: "The transfer agent, as to this transaction, occupied to the defendant the relation of any other bystander. Declarations of bystanders, though made amid all the excitement of the moment, have not been held competent in any case similar to this that has come under our observation. It has no element in common with those cases, where, as in riots, unlawful assemblies and conspiracies for such purposes, the cries of the mob or crowd have been held competent as illustrating the motives and explaining the probable purposes of their leaders and inciters, as in *Lord George Gordon's case*, and perhaps others."

We are not prepared to say that there may not be instances in which the immediate exclamations of bystanders, or remarks addressed to an actor in an occurrence, while it is pending, are admissible as part of the *res gestæ*; but the declarations in this case are not of a like character. See, also, *Lane v. Bryant*, 9 Gray, 245, 247.

The case at bar is quite different from that of *R. R. Co. v. McLane* (11 App. D. C., 220; 25 Wash. Law Rep., 485), where the declarations of the injured and dying child were made to his mother at the place of, and immediately after the receipt of the injury. In such cases as that the rule of admission has been extended with very great liberality.

We do not regard the case of *Coll v. Easton Transit Co.* (180 Pa. St., 618), so strongly relied on, as in point. In that case, apparently, the plaintiff's husband, finding himself in a place of danger on a narrow path, and fearing that he would be crushed between the projecting side of the car and the guard-rail, attempted to reach a place of safety by crossing the road, and in so doing tripped and fell across the track, and was run over. Dalton, a lineman standing by the motorman, saw him fall, and sprang from the car and ran to assist him. The court said: "If Dalton saw the man when he fell, the motorman who was standing on the same platform and whose duty it was to look ahead saw him or should have seen him when he was eighty feet away, and he should have attempted to stop the car at once. The car was running only half as fast as Dalton ran, and its speed was not checked until it had run eighty feet. Whether these inferences could properly be drawn was a question for the jury."

The declaration of Dalton, made immediately after the accident and before the man had been lifted from the tracks to the effect that he had run ahead to pull him off the track



and did not have time to do it, was held to be competent evidence. The declaration of the motorman made two minutes after the accident, to the effect that he did not stop the car because he thought Dalton would have time to pull the man from the track before the car reached him, was also held admissible. These declarations accompanied, were related to, and explanatory of the acts of the parties making them, and not of the acts of the injured person. Their actions were a part of the case from which the jury were to determine the negligence of the motorman, and not the contributory negligence, or recklessness of the injured person. Having held that the jury might infer negligence of the motorman from the acts of Dalton and himself, the court was of the opinion that their declarations, explanatory of their own acts, were made so soon thereafter as to be admissible as part of the *res gestæ*. Had their declarations related to the acts of the injured man, a very different question would have been presented.

In this case the plaintiff's brother would have been a competent witness to the facts observed by him. The fact that he died before trial furnishes no reason for admitting his declarations.

For want of time, we refrain from further discussion of the question, and refer to the opinion in *R. R. Co. v. Collins*, *supra*, where many cases are reviewed.

We are of the opinion that the court erred in permitting the introduction of the evidence, and that the case must be reversed therefor also.

HARRY J. MCGOWAN ET AL., APPELLANTS,

v.

ELLA ELROY, ET AL.

APPEALS; CITATION, SERVICE OF; PARTIES.

1. Service of citation on appeal on one of the attorneys of record for the appellees, who also appeared specially for them on a motion to dismiss the appeal, held sufficient notice of the appeal.
2. A special appeal will not be dismissed for the failure of appellants to observe the requirements of the rule of this court relating to transcripts on regular appeals, where no essential part of the record has been omitted, and such failure has not operated to the prejudice of the appellees.
3. An appeal from a decree dismissing a bill of review will not be dismissed on the ground that certain formal parties defendant to the bill were omitted therefrom where no objection on that ground was made in the court below.

No. 1677. Decided June 7, 1906.

HEARING on a motion by the appellees to dismiss the appeal. Denied.

*Mr. Chas. A. Bendheim* and *Mr. Edmund Burke* for the motion.

*Mr. Charles T. Hendler* opposed.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

Three of the appellees in this cause appearing specially by attorney have moved to dismiss the appeal. It appears that the citation on appeal was served on the attorney of record, who is one of the attorneys appearing specially on this motion. The rule of this court requires service of citation on appeal, but does not state how the

same shall be made. Ordinarily, of course, the proper service would be upon the parties. Many of these, it seems, are non-residents. As service was made upon the attorney of record for the parties in the court below and who appeared here on behalf of this motion, we think sufficient notice of the appeal has been given.

It may be that the decree appealed from was such a final decree as should have been appealed from to this court without leave. The parties, however, being in doubt, made their application for a special appeal, which has been allowed. The appeal bond was filed in sufficient time, and there can be no question but that the appeal is regularly before the court.

One of the provisions of the rule of this court applying to transcripts on regular appeals seems not to have been observed in this case, but as no essential part of the record seems to have been omitted, the appeal would not be dismissed for failure to observe the requirements of the rule where the omission has not operated to the prejudice of the appellee.

Another ground of the motion is that certain of the necessary parties defendant to the bill of review were omitted therefrom. It appears that the parties omitted were four formal parties as husbands of the real parties in interest. No objection was made to the appeal on this ground in the court below, and the appeal can not be dismissed for that reason. *Landram v. Jordan*, 25 App. D. C., 296; 33 Wash. Law Rep., 243.

The motion is denied, with costs.

HARRY J. MCGOWAN ET AL.

v.

ELLA ELROY ET AL.

No. 1677. Decided June 7, 1906.

HEARING on suggestion of a diminution of the record and motion for writ of certiorari. Denied.

*Mr. Chas. A. Bendheim* and *Mr. Edmund Burke* for the motion.

*Mr. Charles T. Hendler* opposed.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

John H. Simms, one of the appellees, has suggested to the court a diminution of the record and moved for certiorari to complete the same.

Ordinarily motions for certiorari to complete the record in this court are granted without examination of the transcript on file where application is made and sworn to as required by the rules. The matter sought to be brought up on this motion would add immensely to the record and incur very great expense. For that reason the court has looked into the transcript of the record filed by the appellant to ascertain whether or not there is reasonable ground for granting the motion. We think there is none.

This, it will be remembered, is an appeal from a decree dismissing a bill of review filed by the appellant in the court below. The transcript of the record filed on that appeal contains the original bill of complaint in the cause, demurrer thereto, decree on demurrer, the amended bill, demurrer and decree thereon, answer of the parties, the final decree of the

court, petition for rehearing, decree thereon, bill of review with demurrer thereto, and decree sustaining that demurrer. The bill seeks to review the decree rendered on the original bill, answer, and evidence taken in the cause. This bill is necessarily founded on some error that is apparent from the bill, answer, and other pleadings and decree. A bill of review does not go into the evidence at large in order to establish an objection to the decree founded on any supposed mistake of the court in its deductions from the evidence. *Whiting v. U. S. Bank*, 13 Pet., 6, 13. See, also, *Adriaans v. Riley*, unreported decision of this court, March 6, 1906, and cases there cited.

The object of the motion in this case is to compel the bringing up and adding to the record of the evidence taken in the court below. As the cause must be tried upon the pleadings and decree and not upon that evidence, the record here ought not to be encumbered with it.

The motion is denied, with costs.

#### Bankruptcy—Discharge—False Statements by Partners and Agents.

In *re A. F. Hardie & Co.*, decided by the United States District Court, W. D., Texas, San Antonio Division, in February, 1906 (143 Fed., 606), it was held that a materially false statement in writing made by a partner in the ordinary course of business of the partnership in buying merchandise, for the purpose of obtaining goods on credit and upon which they were obtained by the firm, affects all the partners and debars another partner from the right to a discharge in bankruptcy under Bankruptcy Act, July 1, 1898 (chap. 541, sec. 14b, § 30 Stat., 550, U. S. Comp. St., 1901, p. 3427, as amended in act February 5, 1903, chap. 487, 32 Stat., 797, U. S. Comp. St. Supp., 1905, p. 684), although he had no knowledge of the fraud. The court said in part:

"While the cases cited do not decide the very question involved in the present controversy, they nevertheless distinctly hold that a fraud committed by one partner in the course of the partnership business renders the firm pecuniarily liable to the aggrieved party for the wrongful act of the offending member. In the case before the court it is shown by the record that A. F. Hardie was the financial agent of the firm and one of its buyers; that the false statement was made by him in the course of the partnership business, and for the benefit of the firm, and that the firm actually received and appropriated the fruits of the fraudulent transaction. If, under the facts stated, the law would impute the fraud of the delinquent partner to innocent members of the partnership to the extent of imposing upon the firm a pecuniary liability, no sound reason is perceived why the principle should not be applied to the present proceeding by refusing a discharge to a member not assenting to the fraud. The court is of the opinion that the principle is applicable to both cases, and hence that the prayer of J. M. Hardie for a discharge should be denied. The attorneys of the applicant insist that a discharge should be granted upon the authority of *In re Hyman* (D. C., 97 Fed., 195), *In re Schultz* (D. C., 109 Fed., 264), and *In re Blalock* (D. C.,

118 Fed., 679). The case last cited scarcely seems to the court to be pertinent. Judge Brown, of the Southern District of New York, decided the two cases of *In re Schultz* (supra) and *In re Meyers* (D. C., 105 Fed., 353); and in expressing a doubt as to the correctness of the ruling of *In re Hyman* (supra) he employed the following language in the case of *In re Meyers*:

"As respects the destruction or concealment of books of account, 'with fraudulent intent to conceal the true financial condition and in contemplation of bankruptcy,' under subdivision 'b' (2) of section 14, if the question were before me de novo, I should be inclined to consider, as no 'offense' or penal element exists in the requirements of this subdivision, that the principal is responsible, as respects a discharge in bankruptcy, for the fraudulent conduct of the agent to whom the whole business has been committed, as in civil cases generally, where the fraud has been committed for the principal's benefit. But as that point seems to have been involved in the case last cited, and a contrary decision was then made by Judge Thomas sitting in this district, it will be followed unless otherwise ruled upon appeal.' (105 Fed., 354.)

"In the *Schultz* case he further said:

"If in any case fraud can be similarly imputed to an innocent partner on account of the fraud of his copartner or other agent, as respects the false or improper keeping of books of account (see *In re Meyers*, D. C., 105 Fed., 353, 354), it can only be in cases where the fraudulent entries or omissions have reference to partnership transactions so as to fall within the general scope of the partner's or agent's authority. The frauds in the bookkeeping in this case related to transactions of a wholly different character, in which the partner was defrauding his copartner, as well as his creditors, in reference to transactions wholly outside of the partnership authority.' (109 Fed., 265.)

"The distinction between the case of *Schultz* and the one before the court is obvious, since here, as has been already shown, the false statement made by A. F. Hardie, upon the faith of which credit was extended by the dry goods company, was an act committed for the benefit of the firm by one partner in the regular course of the partnership business.

"The prayer of the applicant, J. M. Hardie, for a discharge will be denied."

In *re Dresser* (May, 1906, N. Y. Law Journal, June 8, 1906) it was held by the United States Circuit Court of Appeals, Second Circuit, that a bankrupt's discharge will be denied where he has obtained property on credit from any person upon a materially false statement in writing, a copy of which was shown such person by an agent of the bankrupt to whom the bankrupt gave it, to enable the agent to obtain the property for him, although without knowing to what particular person the copy or the statement was to be shown (sec. 14b, § 3).

Inclosure of a right of way is held in *Pritchard v. Lewis* (Wis.), 1 L. R. A. (N. S.), 565, not to be sufficient possession to ripen into an adverse title.

The right to cancel a voluntary conveyance of real estate, made to place it beyond the reach of a judgment in an anticipated action, is denied in *Carson v. Beliles* (Ky.), 1 L. R. A. (N. S.), 1007, as against the heirs of the grantee, although the threatened action had no foundation in law, and the grantee, upon being notified of the conveyance, promised to reconvey on demand.

Fraud or mistake on the part of an umpire, so great and palpable as to imply bad faith, or his failure fairly and honestly to perform the function assigned to him, is held, in *Edwards v. Hartshorn* (Kan.), 1 L. R. A. (N. S.), 1050, to invalidate his decision.

That illegitimate children were the result of adulterous intercourse is held, in *Miller v. Pennington* (Ill.), 1 L. R. A. (N. S.), 773, not to prevent the subsequent intermarriage of their parents, and their acknowledgment by their father from effecting their legitimation under the Illinois statute.

#### RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

### Legal Notices.

#### FIRST INSERTION.

**John B. Larner, Attorney**

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of **Susannah A. Chapman, Deceased.**

No. 13,690. Administration Docket—

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by the Washington Loan and Trust Company, the executor named therein, it is ordered this 16th day of July, A. D. 1906, that the unknown heirs at law and next of kin of said deceased, and all others concerned, appear in said court on Monday, the 20th day of August, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less [Seal] than thirty days before said return day.

WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 29-3t

**Leon Tobriner, Attorney**

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Henry Klinge, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the sixth (6) day of August, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 17th day of July, 1906. CATHERINE KLINGE, by Leon Tobriner, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,031. Administration. [Seal.] 29-3t

### Legal Notices.

**Ralston & Siddons, Attorneys**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Charles R. Rowzee, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of July, 1906. EDWIN C. GRAHAM, 1830 N. Y. ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,761. Administration. [Seal.] 29-3t

**Sheehy & Sheehy, Attorneys**

In the Supreme Court of the District of Columbia,  
Holding a Special Term as a Probate Court.  
In re Estate of **Nora Flannery, Deceased.**

Administration, No. 12,559.

Michael A. Lynch, executor of the last will and testament of Nora Flannery, deceased, having reported that he has sold at public auction to Lewis Holmes for the sum of twenty-five hundred and twenty-five (2525) dollars, part of lot numbered four (4) in square numbered five hundred and sixty-seven (567), beginning for the said part of said lot at a point in the line of north "F" street one hundred and thirty-six (136) feet east of the southwest corner of said square and running thence north seventy-nine (79) feet; thence west fourteen (14) feet and thence south seventy-nine (79) feet to the place of beginning, together with the improvements, being premises No. 119 "F" street northwest; and also that he has sold to John T. Kenealy, for the sum of twenty-four hundred and fifty (2450) dollars, lot marked and lettered "N" in the recorded subdivision of certain original lots in square numbered five hundred and twenty-three (523), made by U. S. Ward, according to the plat of said subdivision as the same appears of record in the office of the surveyor of the District of Columbia, in book B, at page 95, together with the improvements, being premises No. 1234 New Jersey avenue northwest. It is now, this 5th day of July, A. D. 1906, by the court, upon consideration of said report, ordered that said sales be ratified and confirmed unless cause to the contrary be shown on or before the 6th day of August, A. D. 1906. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive [Seal] weeks before said last named date. WRIGHT, Justice. A true copy, Attest: James Tanner, Register of Wills. 29-3t

**Nelson Wilson, Attorney**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Clara O. Richards, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of July, 1906. LOUISA C. RICHARDS, 1217 10th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,801. Administration. [Seal.] 29-3t

In the Supreme Court of the District of Columbia.

**Jennie Grey v. Juliette Moore McKey et al.**  
Equity No. 24,850.

Upon consideration of the report of L. Cabell Williamson, trustee, filed herein, stating that he has sold lot 77, in square 510, and described in the bill of complaint filed herein, to Mrs. Carrie York for the sum of nine hundred and ten dollars (\$910.00), it is by the court, this 13th day of July, A. D. 1906, adjudged, ordered, and decreed that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 13th day of August, A. D. 1906. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks prior to said return day. WRIGHT, Justice. A true copy. Attest: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 29-3t

**Legal Notices.**

**George C. Gertman, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**Mary V. Morris, Complainant, v. Maria L. Taff et al.,**  
**Defendants. Equity No. 26,025.**

Upon consideration of the report of the trustees filed herein reporting their conduct in the premises, and the offer of Maria L. Taff, Edward C. Gross, Blanche M. Gross, Robert L. Gross, and Annie E. Chaffee, defendants herein, to purchase the property involved in this suit at and for the sum of nineteen hundred dollars in cash, it is, this 19th day of July, A. D. 1906, by the court ordered that said trustees be, and they hereby are, authorized to accept the aforesaid offer and complete the sale accordingly unless cause to the contrary be shown on or before the 8th day of August, A. D. 1906. Provided a copy of this order be published once a week for three successive weeks prior to said date in The

[Seal] **Washington Law Reporter. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk.** 29-31

**Geo. Francis Williams, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Robert M. Lockwood, Deceased.**

**No. 13,788. Administration Docket 35.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by Fannie H. Lockwood (widow), it is ordered this 19th day of July, A. D. 1906, that Herbert J. Lockwood, and all others concerned, appear in said court on Monday, the 20th day of August, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY**

[Seal] **M. GOULD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.** 29-31

**Hamilton, Colbert & Hamilton, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Adrian E. Cox, v. Burton Clark et al.**  
**Equity No. 26,265.**

The object of this suit is to declare the title of the complainant to the real estate situated in the city of Washington, District of Columbia, known as lots numbered twenty-two (22) and twenty-three (23) according to the subdivision made by Alfred Richards of lots in square numbered seven hundred and three (703) as said subdivision appears of record in the office of the surveyor of the District of Columbia, in book 20 at page 154, to be good in fee simple by reason of adverse possession, and to declare the title of complainant to be good in him of record and to perpetually enjoin the defendants from asserting any title to said real estate. On motion of the complainants, by his solicitors, Hamilton, Colbert & Hamilton, it is, by the court, this 18th day of July, A. D. 1906, ordered that the defendants, Burton Clark, Peter Campbell, William Claggett, John Mason, otherwise known as John Watson, Charles Lyons, and the unknown heirs, allenees, and devisees of said Clark, Campbell, Claggett, Mason, otherwise called Watson, and Lyons, cause their appearance to be entered herein on or before the first rule day occurring after the fortieth day exclusive of Sundays and legal holidays after the date of the first publication of this order, otherwise this cause will be proceeded with as in case of default. The court is satisfied upon good cause shown, as appears by the affidavit filed herein, that it is not necessary that this order should be published at least twice a month during the period of not less than three months. This order shall be published at least once a week for four successive weeks before said return day, provided that said order shall be published twice a month in the month of July, 1906, and twice a month in the month of August, 1906. This order shall be published in The Washington Law Reporter, the court not deeming it necessary that the same should be published in any other paper, and no other papers having been selected by the parties. **WRIGHT, Justice. A true copy. Test:**

[Seal] **J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk.** July 20-27; aug 2-10

Justice blanks of every description for sale at this office.

**Legal Notices.**

**John B. Larner, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Edwin S. Houston, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 6th day of August, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 10th day of July, 1906. **THE WASHINGTON LOAN AND TRUST COMPANY, by Andrew Parker, Treasurer; John B. Larner, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,067. Administration. [Seal.]** 29-31

**Levi H. David, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Matilda Oger, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of July, 1906. **STEPHEN H. HINES, 1715 14th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,813. Administration. [Seal.]** 29-31

**Wm. A. McKenney, Attorney.**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Robert Portner, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of July, A. D. 1907, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of July, 1906. **AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,756. Administration. [Seal.]** 29-31

**SECOND INSERTION.**

**Harry A. Hegarty and Michael J. Keane, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John A. Heenan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of July, 1906. **MARY J. HEENAN, 3210 P st. N. W. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,791. Administration. [Seal.]** 28-31

**Chas. W. Claggett, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Carolina Scheuch, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of July, 1906. **CHARLES REPP, Forrestville, Md. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,750. Administration. [Seal.]** 28-31

**Legal Notices.**

**J. J. Darlington, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration *o. t. a.* on the estate of Edwin B. Hay, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of July, 1906. GEO. W. EVANS, Dept. Interior. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,774. Administration. [Seal.] 28-3t

**S. McNamara and R. S. Huldekoper, Solicitors**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**

**Katherine S. Means, Guardian, et al., Complainants,**  
**v. William A. Rector et al., Defendants. In Equity,**  
**25,350. No. Doc. 66.**

Upon consideration of the report of the trustees filed herein, on the 11th day of July, 1906, reporting their conduct in the premises and the offer of George D. Farr to purchase the property involved herein at and for the sum of forty thousand dollars, according to the terms set out in the said report, it is, this 11th day of July, 1906, ordered that the said trustees be, and they hereby are, authorized and directed to accept the said offer of the said George D. Farr, and to complete the sale according to the terms of the contract set out herein in this cause, unless cause to the contrary be shown on or before the 13th day of August, 1906. Provided a copy of this order be published once a week for four successive weeks prior to said date in The Washington

[Seal] **Law Reporter. By the Court: WRIGHT, Justice.** A true copy. Test: J. R. Young, Clerk, 28-4t  
 by Wms. F. Lemon, Asst. Clerk.

**Wm. E. Ambrose, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Maggie Harrison, Deceased.**

**No. 13,166. Administration Docket —.**

Application having been made herein for letters of administration on said estate, by B. W. Weaver, creditor, it is ordered this 6th day of June, A. D. 1906, that Mary Crum and Olive Bell, and all others concerned, appear in said court on Monday, the 13th day of August, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] **WRIGHT, Justice. Attest: M. J. Griffith, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.** 28-3t

**G. F. Williams and H. M. Packard, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Lizzie L. Meade, Deceased.**

**No. 13,738. Administration Docket —.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate by Edward W. Jones, executor, and Bertha Gray, executrix, it is ordered this 10th day of July, A. D. 1906, that Madeline Meade (a minor) and all others concerned, appear in said court on Monday, the 13th day of August, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] **WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court.** 28-3t

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**Legal Notices.**

**Wm. D. Hoover, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Mary M. Turner, Deceased.**

**No. 13,751. Administration Docket —.**

Application having been made herein for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by The National Safe Deposit, Savings and Trust Company of the District of Columbia, it is ordered this 9th day of July, A. D. 1906, that Richard Randolph and Mary Wheeler Watson, and all others concerned, appear in said court on Wednesday, the 15th day of August, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] **WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court.** 28-3t

**Thos. G. Hensey, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Benjamin Franklin Hawkes, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of July, 1906. EMMA ALLYN HAWKES, 611 G st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,685. Administration. [Seal.] 28-3t

**Barnard & Johnson, Solicitors for Complainant**  
**Gittings & Chamberlin and T. Percy Myers, Solicitors for Defendants.**

**In the Supreme Court of the District of Columbia.**  
**Ernest L. Schmidt, Complainant, v. Ada G. Farhart**

**Ross et al., Defendants.**

**No. 25,522. In Equity.**

**ORDER NISI.**

Ralph P. Barnard, Justin Morrill Chamberlin, and T. Percy Myers, trustees herein, having reported sale of the property, being part of original lot 1 in square 262, beginning for the same at the S. E. corner of said lot and square, and running thence west on G street 60 feet; thence north 38 feet 9 inches; thence east 60 feet to 18th street; thence south 38 feet 9 inches to the place of beginning, in the city of Washington, District of Columbia, to William W. Miller for the sum of \$20 per sq. ft., there being according to the plat 2,325 sq. ft. of ground contained in said property, making the total purchase price \$46,500; it is, this 6th day of July, A. D. 1906, ordered that the said sale be finally ratified and confirmed, unless good cause to the contrary be shown on or before the 7th day of August, 1906. Provided that a copy of this order be published in The Evening Star newspaper and The Washington Law Reporter once a

[Seal] **week for three (3) successive weeks before the aforesaid day. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by Fred. C. O'Connell, Asst. Clerk.** 28-3t

**Julius A. Maedel, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Jacob Miller, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 10th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 10th day of July, 1906. WILHELMINE S. MILLER, W. CLARENCE MILLER, 617 C st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,752. Admn. [Seal.] 28-3t

**Legal Notices.****Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of John Linquist, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Thursday, the 9th day of August, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 9th day of July, 1906. G. H. POWELL. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,085. Administration. [Seal.] 28-St

**THIRD INSERTION.****Smith Thompson, Jr., Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Edmund Compton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of July, 1906. EMILY A. COMPTON, 220 Est. N. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,772. Administration. [Seal.] 27-St

Everett, Molnar, and Ewing, Solicitors  
In the Supreme Court of the District of Columbia.  
P. G. Scott, Administrator of the Estate of James H. Woodworth, Deceased, and Arthur David, Ancillary Guardian of the Estate of Martha Ann David, an Isane Person, Complainants, v. Samuel A. Putman, Administrator of the Estate of James Smith, Deceased; John A. Smith, Walter Harrington, Frederick W. Steele, and Eliza L. Farrell, Heirs of James Smith, Deceased, and Henry Harrington, Minor, Heir of James Smith, Deceased, Defendants. In Equity, No. 26,227.

The object of this suit is to recover a certain sum of two thousand and forty dollars and ninety-seven cents heretofore wrongfully obtained by the defendant, Samuel A. Putman, administrator of the estate of James Smith, deceased, in the county court of Bent County, State of Colorado, from the complainant, P. G. Scott, administrator of the estate of James H. Woodworth, deceased, and to perpetually enjoin the said defendant, Putman, from paying said sum, or any part thereof, to said estate of James Smith, deceased. On motion of the complainant, it is, this 29th day of June, A. D. 1906, ordered that Henry Harrington, one of the defendants in the above-entitled cause, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Times. By the Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 27-St

**Sheehy & Sheehy, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Joseph P. Brass, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 29th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of June, 1906. THOMAS P. BROWN, 530 4½ st. S. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court No. 13,837. Administration. [Seal.] 27-St

**Legal Notices.****Leon Tobriner, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Salomon Sugenhelmer, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 2d day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 2d day of July, 1906. JENNIE KLEEBLATT, 813 11th st. N. E.; MORITZ BLUMENFELD, 383 H st. N. E.; RAYMOND BLUMENFELD, 383 H st. N. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,773. Administration. [Seal.] 27-St

**Henry H. Glassie, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia and the State of Massachusetts, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Anna Lowell Woodbury, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 29th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 29th day of June, 1906. WILLIAM L. PUTNAM, 60 State st., Boston, Mass.; LLEWELLYN JORDAN, U. S. Treasury Dept., Wash., D. C.; M. L. TURNER, 1319 Mass. ave. N. W., Wash., D. C. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,782. Administration. [Seal.] 27-St

**Oscar Luckett, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia and the State of Pennsylvania, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary C. Earle, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 3d day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 3d day of July, 1906. GEORGE EARLE, JR., Surveyor's Office, D. C.; CHARLES T. EARLE, Navy Dept., D. C.; MARY T. EARLE, 121 W. Chestnut ave., Chestnut Hill, Philadelphia, Pa. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,722. Administration. [Seal.] 27-St

**George R. Linkins, Attorney  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**In re Will of Katherine Frawley, Deceased.**  
Administration. No. 13,836.

Michael J. Frawley having made application to the Supreme Court of the District of Columbia holding a Probate Court, for probate and record of the last will and testament of said Katherine Frawley, deceased, and for letters of administration de bonis non cum testamento annexo, to George R. Linkins, it is, this 3d day of July, A. D. 1906, ordered that Patrick Frawley, James Frawley, Kate McMahon, Patrick S. Frawley, Mary McMahon, Ann O'Loughlin, John O'Loughlin, Patrick O'Loughlin, and the unknown heirs at law and next of kin of said Katherine Frawley, deceased, and all others concerned, appear in said court, on Monday, the 13th day of August, A. D. 1906, at 10 o'clock A. M., and show cause if any they have why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the

[Seal] first publication to be not less than thirty days before said return day. WRIGHT, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 27-St

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 513 Fifth Street, N. W.



# The Washington Law Reporter

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WASHINGTON, D. C. - - - - JULY 27, 1906

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IN another column will be found the amendments to the Code of Law for this District, adopted by Congress at its recent session. The attention of members of the bar is invited to the last proviso to section 713 as amended, by which it is provided "that all publications required by said section 5211 of the Revised Statutes, and all other publications authorized or required by existing law to be made in the District of Columbia, shall be printed in two or more daily newspapers, of general circulation, published in the city of Washington, one of which shall be a morning newspaper."

THE twenty-ninth annual meeting of the American Bar Association will be held at St. Paul, Minn., on August 29, 30, and 31, 1906. The meetings will be held in the State capitol. Hon. George R. Peck, of Chicago, will deliver his address as president of the association on Wednesday morning, August 29. The annual address will be delivered by Hon. Alton B. Parker, of New York, at the morning session on August 30. Members of the general council are requested to meet in the reception room at the Hotel Regan on Tuesday, August 28, at 9.30 p. m. The programme for the meeting will be given in our next issue.

## Amendments to the Code.

The Code of this District was amended in several particulars at the session of Congress recently closed.

Section 9 was amended, by an act approved April 21, 1906, by adding thereto the following:

"Any justice of the peace may at any time, including Sundays and legal holidays, on complaint under oath or actual view, issue warrants returnable to the police court against persons accused of crimes and offenses committed in the District of Columbia, and he shall make a record of his proceedings in every case in a book to be kept for that purpose. Such warrants shall be issued free of charge."

Section 558, relating to notaries public, was, by an act approved June 29, 1906, amended by adding at the end of said section the following:

"*Provided*, That the appointment of any person as such notary public, or the acceptance of his commission as such, or the performance of the duties thereunder, shall not disqualify or prevent such person from representing clients before any of the Departments of the United States Government in the District of Columbia or elsewhere, provided such person so appointed as a notary public who appears to practice or represent clients before any such Department is not otherwise engaged in Government employ, and shall be admitted by the heads of such Departments to practice therein in accordance with the rules and regulations prescribed for other persons or attorneys who are admitted to practice therein: *And provided further*, That no notary public shall be authorized to take acknowledgments, administer oaths, certify papers, or perform any official acts in connection with matters in which he is employed as counsel, attorney, or agent or in which he may be in any way interested before any of the Departments aforesaid."

Sections 713 and 714, by an act approved June 25, 1906, were amended to read as follows:

"SEC. 713. All savings banks, or savings companies, or trust companies, or other banking institutions, organized under authority of any act of Congress to do business in the District of Columbia, or organized by virtue of the laws of any of the States of this Union, and having an office or banking house located within the District of Columbia where deposits or savings are received, shall be, and are hereby, required to make to the Comptroller of the Currency and to publish all the reports which national banking associations are required to make and publish under the provisions of sections fifty-two hundred and eleven, fifty-two hundred and twelve, and fifty-two hundred and thirteen of the Revised Statutes of the United States, and shall be subject to the same penalties for failure to make such reports as are therein provided, which penalties may be collected by suit before the Supreme Court of the District of Columbia. And the Comptroller shall have power, when in his opinion it is necessary, to take possession of any such bank or company, for the reasons and in the manner



and to the same extent as are provided in the laws of the United States with respect to national banks: *Provided, however*, That banking institutions having offices or banking houses in foreign countries as well as in the District of Columbia shall only be required to make and publish the reports provided for in this section semiannually: *And provided further*, That all publications authorized or required by said section fifty-two hundred and eleven of the Revised Statutes, and all other publications authorized or required by existing law to be made in the District of Columbia, shall be printed in two or more daily newspapers of general circulation, published in the City of Washington, one of which shall be a morning newspaper.

"SEC. 714. The Comptroller of the Currency, in addition to the powers now conferred upon him by law for the examination of national banks, is hereby further authorized, whenever he may deem it useful, to cause examination to be made into the condition of any bank mentioned in the preceding section. The expense of such examination shall be paid in the manner provided by section fifty-two hundred and forty of the Revised Statutes of the United States relating to the examination of national banks."

By an act approved April 14, 1906, section 927 was amended to read as follows:

"SEC. 927. INSANE CRIMINALS.—When any person tried upon an indictment or information for an offense is acquitted on the sole ground that he was insane at the time of its commission, that fact shall be set forth by the jury in their verdict; and whenever a person is indicted or is charged by an information for an offense, and before trial or after a verdict of guilty, prima facie evidence is submitted to the court that the accused is then insane, the court may cause a jury to be impaneled from the jurors then in attendance on the court or, if the regular jurors have been discharged, may cause a sufficient number of jurors to be drawn to inquire into the insanity of the accused, and said inquiry shall be conducted in the presence and under the direction of the court. If the jury shall find the accused to be then insane, or if an accused person shall be acquitted by the jury solely on the ground of insanity, the court may certify the fact to the Secretary of the Interior, who may order such person to be confined in the hospital for the insane, and said person and his estate shall be charged with the expense of his support in the said hospital. The person whose sanity is in question shall be entitled to his bill of exceptions and an appeal as in other cases."

An act approved April 30, 1906, adding a new subchapter to chapter 15 relating to condemnation of land for streets, will be printed next week.

A gift inter vivos is held, in *Harris Banking Co. v. Miller* (Mo.), 1 L. R. A. (N. S.), 790, not to be established by depositing a fund in a bank with the statement that it was intended for the donee, and the delivery to the latter of a certificate of deposit with an indorsement indicating that it was his.

## Court of Appeals of the District of Columbia.

JOHN PAUL JONES ET AL., APPELLANTS,  
v.

JULIAN COSTILLO SLAUGHTER ET AL.

EVIDENCE; WITNESSES; ALLEGED ORAL AGREEMENT WITH DECEDENT FOR CERTAIN COMPENSATION; QUANTUM MERUIT.

1. S., having a contract with the Republic of Mexico by which he was to receive 10 per cent of the amount recovered by that Republic on account of moneys paid the United States in settlement of the La Abra Mining Company and Weil claims, which claims were subsequently found to be fraudulent, agreed in writing with appellants to pay them one-half the amount received by him on account of the La Abra claim, and this was paid them. In a proceeding instituted after the death of S., to determine the rights of claimants to a portion of the fund paid by the Mexican government to a receiver appointed therein, appellants set up a claim under an oral agreement with S. for one-half the amount paid on account of the Weil claim. The only direct evidence of such agreement was the testimony of appellants themselves, which was objected to. *Held*, that their evidence was inadmissible under section 1064 of the Code, and the court below was right in holding the evidence insufficient to establish such oral agreement.
2. Evidence that appellants, with the knowledge and approval of S., had prosecuted both claims, while it might form the basis of a claim for the value of their services, held not to establish the specific contract for a certain compensation on which the cross-bill filed by them was founded.

No. 1613. Decided June 5, 1906.

APPEAL from a decree of the Supreme Court of the District of Columbia, in Equity, No. 23,234, denying the claims of appellants in respect of a fund in the hands of a receiver. *Affirmed*.

Mr. Henry E. Davis for the appellants.

Mr. J. J. Darlington, Mr. A. S. Worthington, and Mr. W. J. Lambert for the appellees.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This is an appeal from a decree denying the claims of the appellants to a part of a fund in the hands of a receiver under the appointment of the court. A history of the origin of this litigation is important. It appears that provision was made in a convention entered into between the United States and the Republic of Mexico, on July 4, 1863, for the adjustment of certain claims of citizens of either country against the other through a mixed commission. Each of the contracting parties appointed a commissioner, and these were empowered to appoint an umpire in any case in which they might differ in opinion. Among the claims submitted to this "Mixed Claims Commission," as it has been called, were one against Mexico by the La Abra Silver Mining Company, and another against the same country by Benjamin Weil.

The commissioners having disagreed in opinion respecting the dispositions of these two claims, appointed as umpire Sir Edward Thornton, the British Minister to the United States. The umpire made an award of \$683,041.82 in favor of the La Abra Silver Mining Company, and \$487,810.68 in favor of Weil. The final decisions of the umpire were published in the year 1876. After this publication Mexico discovered evidence, not before obtainable, suffi-

cient to show that the two claims were fraudulent. James E. Slaughter, then a resident of Mobile, Ala., apparently furnished the information which led Mexico to attempt to reopen the question of the validity of said claims.

Acting by authority of his government, Don Ignacio Mariscal, the minister of Mexico to the United States, entered into a contract with Slaughter on May 2, 1876, whereby, in consideration of his undertaking the proof and establishment of the fraudulent character of the claim of Weil against Mexico, that government agreed, "immediately upon the final withdrawal or waiver by the proper authorities of the Government of the United States, whether by treaty, executive order, or otherwise, of the whole or any portion of said claim, to pay to Slaughter a sum equal to one-tenth of the portion of said claim," which may be so waived or finally withdrawn, or of the "whole amount if it be so waived or withdrawn."

A similar contract was entered into in respect of the La Abra Company's claim.

It appears also that Slaughter afterwards entered into an agreement with one Samuel E. Loeb, who was in possession of certain books and documents necessary to prove the fraudulent character of the Weil claim, by which he undertook to pay Loeb two-fifths of any money that he should collect from Mexico under the contract relating to the Weil claim. The La Abra claim was not included. It is conceded that Slaughter performed his contract with Senor Mariscal in each of the cases.

During the year 1877 Mexico made a statement to the Secretary of State of the United States of the fraudulent nature of the two claims, and asked their reinvestigation and the stoppage of payments to the claimants. Mexico, however, commenced and continued to pay over to the Secretary of State the sum awarded against her in certain installments, as provided by the terms of the convention of 1868.

The then Secretary of State made inquiry into the representations made, and reported to Congress that the testimony submitted brought into grave doubt the integrity of the claims, but that having no authority to institute a judicial proceeding for the purpose requested, he referred the matter to Congress for action. In 1878, Congress passed an act authorizing the Secretary to suspend the distribution of the funds, and to institute an investigation to ascertain the truth of the charges preferred by Mexico. A treaty was signed providing for the rehearing of the claims before an international tribunal. This treaty, several years after its submission to the Senate of the United States, failed to receive approval.

On December 28, 1892, an act was passed authorizing and directing the Attorney-General to bring a suit or suits in the name of the United States, in the Court of Claims, against La Abra Silver Mining Company, its successors, assigns, and so forth, to determine whether the award to that company has been obtained by fraud effectuated by means of false swearing or other false and fraudulent practices; and in case it be so determined to bar and foreclose all claims in law or equity on the part of said company to the money, or any part thereof, received from the Republic of Mexico for or on account of

such award. And in case of such determination the President of the United States was authorized to return to Mexico any money paid by her and remaining in the custody of the United States.

The suit authorized by this act was brought and the Court of Claims found that the whole sum awarded had been obtained by fraud effectuated by means of false swearing and other false and fraudulent practices, and adjudged that the La Abra Company be forever barred and foreclosed in respect of the money received from the Republic of Mexico for or on account of the award. 32 O. C., 462. This judgment or decree was affirmed December 11, 1899, on appeal to the Supreme Court of the United States. *La Abra Silver Mining Co. v. U. S.*, 175 U. S., 423.

A similar suit was instituted to bar and foreclose the claim under the award in favor of Weil under a like statute. The Court of Claims rendered a like judgment in that case also. 35 O. Cl., 42. The defendant took an appeal, but failed to perfect the same and it was docketed and dismissed in the Supreme Court of the United States during the October term, 1900.

Prior to the passage of the act of 1892, it appears that the United States paid from the money received from Mexico the sum of \$240,683.06 to the La Abra Company, and \$171,889.64 to Weil and his assignees, making in all \$412,572.70.

The money paid on account of these awards that remained in the custody of the United States was returned to the Republic of Mexico, under the authority of the act of 1892, after the rendition of the aforesaid decrees.

Ten per cent of the amounts so returned was paid over to Slaughter under the contract with him before recited.

Immediately after the determination of the La Abra case, Slaughter, and parties associated with him, set about procuring an act of Congress requiring repayment to Mexico of the part of the La Abra award that had been paid to that company as above recited. After the final disposition of the Weil claim it was included in the effort to procure repayment. Bills were introduced in both Houses of Congress, favorable reports thereon obtained, and attempt made to incorporate the necessary provision for repayment in some of the appropriation bills. Finally, on February 14, 1902, the necessary appropriation was made.

In accordance with this authority, the ambassador of Mexico, Don Manuel de Aspiroz, received a Treasury draft for the said sum of \$412,572.70, covering the La Abra payment of \$240,683.06, and the Weil payment of \$171,889.64.

Slaughter died in the City of Mexico, where he appears to have gone to attempt to induce the government of Mexico to increase the fees provided in his contract of 1877, on account of the unexpected difficulties, expenses, and delays in the performance of his obligations. His death occurred January 2, 1901. Youngblood, one of the parties to this proceeding, was appointed administrator of his estate by the Probate Court in Mobile, Ala.

Having received the entire fund, the ambassador recognized the contracts with Slaughter as extending thereto, and entitling him to one-

tenth of the same, which amounted to the sum of \$41,257.00.

This portion recognized as payable to Slaughter was claimed by the aforesaid administrator, and by two sets of persons claiming under an unprobated will and as next of kin of Slaughter. The appellants, Jones and Lines, also laid claim to a portion of the fund, the grounds of which are hereafter stated. One Alfred T. Green also made a claim. Under proceedings for the probate of an alleged will of Slaughter in the District of Columbia, Charles L. Frailey had, in the meantime, been appointed collector of the estate under the provisions of the probate law in force in said District.

The ambassador was unwilling to assume the responsibility of determining the rights of the adverse claimants. To procure the appointment of a receiver to whom the payment could be safely made, the proceeding out of which this appeal grew, was instituted.

On April 12, 1902, the proceeding was begun by a bill filed by Julian C. Slaughter, Olga E. Rogers, Roy L. E. Slaughter, Charles L. Frailey, as collector, and William Youngblood, as administrator, under appointment of the Alabama court, against Daniel A. Slaughter, Edwin L. Slaughter, Eliza F. Slaughter, Carrie W. Slaughter, Mary Slaughter, Mamie S. Hamilton, Alfred T. Green, John Paul Jones, and George Lines.

This bill recites the Slaughter contract, the readiness of the Mexican ambassador to pay over the sum of \$41,257 as due Slaughter thereunder. It then alleges that Lines and Jones and defendant, Alfred T. Green, as assignee of one Alfred A. Green, claim parts of said fund under certain alleged agreements with Slaughter. It also alleges that there had been offered for probate in the District of Columbia an alleged will of said Slaughter, whereby he had bequeathed his entire estate to the complainants, except the said Frailey and Youngblood, and that a caveat having been filed in said proceeding, said Frailey had been appointed collector of the estate pending the proceedings thereon. It is alleged that the defendants, other than Lines, Jones, and Green, claim as the next of kin of said Slaughter.

It then recites the fact that the conflicting claims prevent the payment of the money, and alleges that it may be sent beyond the jurisdiction unless a receiver be appointed.

On the same day, by consent of all of the parties, a decree was entered appointing Charles L. Frailey receiver and authorizing him to receive the fund, and to execute an instrument acquitting and discharging the Republic of Mexico from any liability on account of the claims of all of the parties.

The money was thereafter paid to the receiver and held to await the adjustment of the claims of the several parties.

On February 20, 1903, one Samuel E. Loeb filed a petition of intervention setting out a contract made with Slaughter November 2, 1894, under which he claimed two-fifths of the fund paid over on account of the Weil fund. He claimed no interest in the La Abra fund.

On May 18, 1904, George Lines and John Paul Jones filed a cross-bill against all of the other

parties, including said Loeb. The pertinent allegations of this cross-bill are the following:

3. After the making of the certain agreement between the said James E. Slaughter and the Republic of Mexico, as in the third paragraph of the said original bill of complaint set forth, the cross-complainants, John Paul Jones and George Lines, were retained and employed by the said Slaughter to co-operate with and assist him, the said Slaughter, in the rendition of the services provided and undertaken to be performed by the said Slaughter under and in conformity with the said agreement, he, the said Slaughter, covenanting and agreeing to pay to them, the said Jones and Lines, an amount equal to one-half of any and all sum or sums of money which he, the said Slaughter, might receive from the said Republic of Mexico for and on account of services so as aforesaid to be rendered and performed by him as aforesaid, in respect of securing a repayment by the United States of America to the said Republic of Mexico of certain sums of money received by the said United States from the said Republic of Mexico on account of the certain awards in favor of La Abra Silver Mining Company and one Benjamin Weil, and paid over by the said United States to the said company and the said Weil, and their respective representatives and assigns, amounting in the aggregate to the sum of \$412,572.70.

4. The cross-complainants, having accepted the retainer and employment of the said Slaughter in the premises, undertook to co-operate with and assist, and did co-operate with and assist, the said Slaughter in the rendition of the services aforesaid up to the time of the death of the said Slaughter, on to wit, the 2nd day of January, A. D. 1901, and thereafter continued to render and perform the necessary services in respect of procuring the repayment by the said United States to the said Republic of Mexico of the said sums aforesaid, with the result that the said sums, in the aggregate aforesaid, were procured so to be repaid, and the same were in fact, by virtue of an act of the Congress of the said United States of the 14th day of February, A. D. 1902, repaid to the said Republic of Mexico.

5. By reason of the premises there became justly due and payable by the said James E. Slaughter, or his legal representatives, to the cross-complainants, the sum of, to wit, \$12,034.15, on account of the money so as aforesaid repaid upon the said award to the said La Abra Silver Mining Company, and the sum of \$8,594.48 on account of the sum so as aforesaid repaid upon the said award to the said Weil.

Other paragraphs allege settlement so far as the La Abra fund is concerned, and that complainants have a lien upon the Weil fund in the hands of the receiver.

Answers denying the contract and the performance of services were filed, and testimony was taken.

The following general decree of distribution was entered by the court on June 30, 1895:

"This cause came on to be heard at this term upon the original bill and the petition of intervention filed by Samuel E. Loeb with the exhibits therein referred to, and the cross-bill filed by John Paul Jones and George Lines, to-

gether with the answer to said petition and cross-bill and the replication thereto, and the depositions and documentary evidence, and was argued by counsel, and the court after due consideration had, being of opinion that the intervenor, Samuel E. Loeb, is entitled under the contract between him and James E. Slaughter, deceased, dated the second day of November, eighteen hundred and ninety-four, to two-fifths of the sum of Seventeen Thousand and One Hundred and Eighty-eight Dollars and Ninety-six cents (\$17,188.96) heretofore paid into the hands of Charles L. Frailey, the Receiver in this cause, by the Government of Mexico through Señor Don Manuel de Aspíroz, the Ambassador of said Government near the City of Washington, in behalf of the estate of James E. Slaughter, deceased, under and in fulfillment of the contract between said Slaughter and Señor Don Ignacio Mariscal acting for and by authority of the said Government of Mexico, dated the ninth day of March, eighteen hundred and seventy-seven (1877), the said sum of \$17,188.96 being ten per centum of the amount of \$171,889.64 appropriated by Congress on February 14th, 1902 (32 Stat. 5) to complete the reimbursement to the Government of Mexico of the amount paid by it under the fraudulent award in favor of Benjamin Weil against said Government, and the court being of opinion further that the said John Paul Jones and George Lines complainants in said cross-bill have not established the alleged contract set up in said cross-bill between the complainants therein and the said James E. Slaughter, deceased, nor a state of facts upon which an allowance can be made without contravening public policy, doth, therefore, this Thirtieth day of June, Nineteen Hundred and Five, order, adjudge and decree:

First. That Charles L. Frailey, the Receiver, do pay out of the fund in his hands in this cause to Samuel E. Loeb, or his Solicitor of record in this cause, the sum of six thousand eight hundred and seventy-five dollars and fifty-eight cents (\$6,875.58), with costs, and as to so much in excess of said sum as is claimed by the said Loeb in his petition, the same is hereby disallowed as not within the contract of November 2nd, 1904, and consequently no lien on the fund, and it is accordingly ordered and decreed that the said petition of intervention be dismissed as to said excess but without prejudice to any other proceeding to recover the same.

Second. That said Receiver out of the said funds shall pay the costs of this suit and retain a commission on the amount received by him of three per cent. less the amount of commissions already retained by him under a former order of this court.

Third. That the remainder of the fund in his hands as said receiver he shall divide into two equal parts, and shall pay one part in equal shares to Julian Castillo Slaughter, Olga Evans Rogers, W. J. Lambert guardian of Roy L. Evans Slaughter, and D. W. Baker guardian of Edward Evans Slaughter, or their respective solicitors of record, and the other half in equal shares to Daniel A. Slaughter, Edwin L. Slaughter, Eliza F. Slaughter, Carrie W. Slaughter, John W. Slaughter, Mary Slaughter, Mamie S. Hamilton, or their respective solicitors of record.

Fourth. That the cross-bill of said John Paul Jones and George Lines, be, and the same hereby is, dismissed with costs."

Jones and Lines appealed from so much of this decree as denied their claims to the fund and dismissed their cross-bill. Julian C. Slaughter, Olga E. Rogers, Roy L. E. Slaughter, Edward E. Slaughter, Daniel A. Slaughter, Edwin L. Slaughter, Eliza F. Slaughter, Carrie W. Slaughter, John W. Slaughter, Mary Slaughter, and Mamie S. Hamilton appealed from so much of the decree as directed payment of a part of the Weil fund to Loeb.

These appeals have been separately prosecuted, but were argued at the same time.

The question for determination in this appeal is the right of Jones and Lines to participate in the distribution.

The following contract was introduced in evidence by the said claimants:

"This memorandum of agreement made and entered into by and between James B. Slaughter, of the city of Mobile, in the State of Alabama, of the first part, and George Lines, of the city of Milwaukee, in the State of Wisconsin, and John Paul Jones, of Woodside, in the State of Maryland (but doing business in the city of Washington in the District of Columbia), of the second part witnesseth:

"Whereas: the said party of the first part is now in contractual relations with the Republic of Mexico under and by virtue of an instrument in writing executed by and between the said party of the first part and the said Republic of Mexico, acting through its duly accredited representative, on or about the — day of March, 1877, whereby it is provided, in effect, that the said party of the first part shall have and receive of the said Republic of Mexico an amount equal to ten (10) per centum of any and all sum or sums of money saved to the said Republic of Mexico through the labors of the party of the first part in securing the revocation, annulment or setting aside of a certain award in favor of La Abra Silver Mining Company, made December 27, 1875, in the sum of \$683,041.32, by the umpire under the provisions of the convention between the United States and the Republic of Mexico of July 28, 1868, and

"Whereas: the Supreme Court of the United States did, on the 11th day of December, 1899, decide that said award was, as a whole, obtained by fraud and perjury; and

"Whereas: there was, prior to the decision above referred to, in the hands of the Secretary of State of the United States, the sum of \$403,030.08, paid by the Republic of Mexico for and on account of said award, and which said amount has since been repaid to the said Republic of Mexico; and

"Whereas: in and prior to the year 1881 there had been paid out and distributed by the Secretary of State of the United States to La Abra Silver Mining Company, or its assignees, the sum of \$280,011.24, which said sum had been paid at various times by the Republic of Mexico for and on account of said award; and

"Whereas: there is now pending in the Congress of the United States a bill to refund to the Republic of Mexico the said sum of \$280,011.24, so distributed as aforesaid; and

"Whereas: the said party of the first part is

desirous of securing the services and assistance of the said parties of the second part in and about the passage of said bill;

"Now therefore, it is hereby agreed by the parties to this instrument that the said party of the first part has heretofore retained and by these presents does retain and employ the said parties of the second part to assist in and about securing the passage of the said bill now pending in Congress, as aforesaid, and he hereby covenants and agrees to pay to them, the said parties of the second part, an amount equal to one half ( $\frac{1}{2}$ ) of any and all sum or sums of money which he, the said party of the first part, may receive from the Republic of Mexico for and on account of services rendered or to be rendered in and about securing the passage of said bill, whether the same be received by said party of the first part under the contract or agreement entered into between him, the said party of the first part, and the Republic of Mexico, on the — day of March, 1877, or under any other contract or agreement heretofore, or hereafter to be executed.

"Provided, however, if the said party of the first part be compelled to pay, out of the sum or sums to be received from the Republic of Mexico, for services rendered and to be rendered as hereinbefore set forth, any sum whatsoever to the heirs at law, or legal representatives of one Alfred A. Green, deceased, late of San Francisco, in the State of California, then, and in that event, each of the parties to this instrument hereby covenants and agrees that he will bear and pay his proportionate share of such amount; and it is further understood and agreed that in the division of any sum or sums of money which may be received from the Republic of Mexico for services as hereinbefore set forth, the said parties of the second part, *i. e.*, John Paul Jones and George Lines, shall share and share alike; *viz*: one fourth ( $\frac{1}{4}$ ) of any such sum or sums to each; and

"It is distinctly understood that in the event of the death of either of the parties of the second part, the survivor and the party of the first part shall continue their efforts and labors to secure the passage of said bill by the Congress of the United States, and the legal representatives of such deceased party shall take and have the share which would have gone to such deceased had he lived and performed his just and equitable proportion of such efforts and labors; and in the event of the death of the party of the first part, the parties of the second part covenant and agree that they will endeavor to secure from the Republic of Mexico a contract or agreement, in all respects similar in purport to that now existing between the said party of the first part and said Republic of Mexico, or which may hereafter be entered into or executed, and if they succeed in so doing they, the said parties of the second part will pay or cause to be paid to the legal representatives of the said party of the first part the full and entire amount which he would have received had he lived and performed his just and equitable proportion of the effort and labors as contemplated by the tenor and intent of this instrument.

"All expenses incurred in and about the subject matter of this agreement, excepting only traveling expenses, including board or

hotel bills, shall be borne by each party to this instrument, in proportion as his interests may appear.

"In witness whereof we have hereunto set our hands and seals, this 3rd day of July, 1900.

"JAMES E. SLAUGHTER.

"GEO. LINES.

"JOHN PAUL JONES.

"In consideration of the great labor, time and money expended by the party of the first part to the foregoing instrument, it is his earnest hope and confident expectation that, in the event of his death, the Republic of Mexico will enter into a new contract or agreement with the parties of the second part, and treat and deal with them as though he, the said party of the first part, were alive.

"JAMES E. SLAUGHTER."

This contract had relation to the La Abra fund alone, and it appears that Lines and Jones have been settled with thereunder. The question involved respects their claim to an interest in the fund received from the Ambassador of Mexico on account of the Weil claim.

They did not claim to have a written contract with Slaughter regarding this fund, but undertook to prove an oral contract of a similar character to that relating to the La Abra fund.

The learned justice presiding in the Equity Court held the evidence insufficient to establish such a contract, and we concur in his opinion. The only direct evidence tending to show a contract with Slaughter for an interest in the Weil fund is found in the depositions of Jones and Lines, who testified on their own behalf. This was objected to before the examiner, and that objection was renewed on the hearing.

This evidence is clearly inadmissible under the provision of section 1064 of the Code, which reads as follows:

"If one of the original parties to a transaction or contract has, since the date thereof, died or become insane or otherwise incapable of testifying in relation thereto, the other party thereto shall not be allowed to testify as to any transaction with, or declaration or admission of the said deceased or otherwise incapable party in any action between said other party or any person claiming under him and the executors, administrators, trustees, heirs, devisees, assignees, committee, or other person legally representing the deceased or otherwise incapable party, unless he be first called upon to testify in relation to said transaction or declaration or admission by the other party, or the opposite party first testify in relation to the same, or unless the transaction or contract was made or had with an agent of the said deceased or otherwise incapable party, and said agent testifies in relation thereto, or unless called to testify thereto by the court." See *Mankey v. Willoughby*, 21 App. D. C., 314, 322; 31 Wash. Law Rep., 226; *Dawson v. Waggaman*, 23 App. D. C., 428, 434; 32 Wash. Law Rep., 226. The case of *Tuohy v. Trail*, 19 App. D. C., 79; 30 Wash. Law Rep., 3, relied on by the appellants, does not involve the question here presented.

The competent testimony shows that the bill for repayment of the La Abra fund had been presented before the ending of the Weil litigation, and was being prosecuted by Jones and

**Lines and Slaughter.** The first bill for the repayment of the Weil fund was introduced later by Senator Proctor; at whose suggestion or request does not appear. It was not done, however, on the suggestion or request of either Lines or Jones. The United States were under the same moral obligation to refund to Mexico the money in each case, and they were naturally joined together when the final appropriation was made.

The testimony shows conclusively that Jones and Lines prosecuted both demands, during the interval between original presentation and allowance, with the knowledge and approval of Slaughter. While this might form the basis by them of a claim for the value of their services, it does not establish the specific contract for a certain compensation, on which their cross-bill is founded.

This renders it unnecessary to determine whether the evidence showing the services actually rendered in the prosecution of the claim before Congress were such as are usually called lobbying services, for which no action will lie.

We are of the opinion that the decree denying appellants right to recover, and dismissing their cross-bill, was right; it is therefore affirmed with costs.

Affirmed.

#### DISTRICT OF COLUMBIA, APPELLANT,

v.

ANDREW GLASS, PRESIDENT, ETC.,  
ET AL.

#### TAXATION; BUILDING ASSOCIATIONS; OVERPAYMENT; RIGHT TO RECOVER BACK.

1. The tax upon building associations of "four per cent per annum on their gross earnings for the preceding year ending June 30," imposed by section 6 of the act of July 1, 1902, was repealed by the act of April 23, 1904, whereby such associations are required to pay as taxes "two per cent per annum on their gross earnings for the preceding year ending June 30;" and the taxes payable in May, 1904, being those for the fiscal year ending June 30, 1904, were at the rate of two per cent on the gross earnings for the year ending June 30, 1903.
2. Where a tender was made by the plaintiff association of taxes at the rate of two per centum on its gross earnings, which tender was refused and a demand made for payment at the rate of four per cent, and thereafter and in order to avoid the threatened distraint and sale of its property, said association paid the sum demanded under protest, held that such payment was involuntary, and the association was entitled to maintain an action to recover the amount paid in excess of the two per cent upon its gross earnings tendered by it.

No. 1571. Decided June 5, 1906.

**APPEAL** by District of Columbia from a judgment of the Supreme Court of the District of Columbia, at Law, No. 47,233, entered upon a demurrer to the declaration in an action to recover an overpayment of taxes. Affirmed.

*Mr. E. H. Thomas* and *Mr. F. H. Stephens* for the appellant.

*Mr. Addis B. Browne* and *Mr. C. F. Benjamin* for the appellees.

*Mr. Justice McCOMAS* delivered the opinion of the Court:

The plaintiff brought this suit to recover a sum of money which it claimed was an over-

payment of taxes exacted by the District of Columbia, and which sum it had paid under protest, with reservation of all its rights and remedies, claiming that it made the payment under duress. The defendant demurred to the plaintiff's declaration. The court below overruled the demurrer and entered judgment for the plaintiff for the amount claimed in the declaration and costs. The defendant appealed to this court.

The declaration states the following case: Congress, by the general appropriation act providing for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1903, approved July 1, 1902 (32 Stat. at Large, Chap. 1352), provided in sections 6 and 7 a method of taxation of personal property, and, among other things, enacted that "building associations shall pay to the collector of taxes of the District of Columbia four per centum per annum on their gross earnings for the preceding year ending June thirtieth." The plaintiff, on August 1, 1903, made due return of its gross earnings for the year ending June 30, 1903, to the assessor of the District in accordance with law, and returned as such the sum of \$108,252.91, and was subject to the assessment and levy of a tax of 4 per cent upon such gross earnings for the fiscal year ending June 30, 1904. This statute provided that said tax should become due and payable in the month of May, 1904, subject to a penalty and to distraint of plaintiff's goods and chattels in default of payment of said tax during May, 1904. The statute further provided that taxes upon personal property "shall be due, payable, and collectable at the same time and times as the general tax on real estate in said District and shall be subject to the same penalties for non-payment thereof until distraint or sale as hereinbefore provided." Taxes on real estate were payable in one payment in May or in two equal instalments in May and November of each year in the discretion of the tax payer.

Congress by an act entitled "An act to amend the law relating to taxation in the District of Columbia," approved April 23, 1904 (33 Stat. at Large, Chap. 1850), in section 2 of said act, amended section 6 of the law for the taxation of personal property before mentioned in many important particulars, and, among others, section 6, paragraph 9, was amended so as to read as follows: "Building associations in the District of Columbia shall pay to the collector of taxes of the District of Columbia two per centum per annum on their entire gross earnings for the preceding year ending June thirtieth."

By section 3 of this act of April 23, 1904, it was provided "that all acts and parts of acts inconsistent with the provisions of this act are hereby repealed." The plaintiff claimed that by virtue of this act the rate of taxation upon its gross earnings mentioned for the year ending June 30, 1903, was reduced to 2 per cent per annum, and during May, 1904, the plaintiff applied to the assessor of the District to make proper entry in its tax books to show that such gross earnings for the fiscal year ending June 30, 1904, were taxable at the rate of 2 per cent per annum and to show the amount of tax to be \$2,165.06 for said fiscal year. The assessor refused, and the plaintiff tendered the last men-

tioned sum, but the defendant refused to accept less than 4 per cent upon such gross earnings and delivered a bill for \$4,330.12, a tax of 4 per cent on the gross earnings mentioned, with notice to the plaintiff to pay the same to the collector of taxes of said District during May, 1904, under pain of a certain penalty prescribed by law. The plaintiff still refused to pay more than two per cent. The collector of taxes notified the plaintiff that unless it immediately paid \$4,416.72, being 4 per cent on such gross receipts and the penalty that had accrued thereon, he would forthwith proceed to distrain and thereby enforce the collection, and on July 8, 1904, the plaintiff paid the last-named sum under protest, as before mentioned, and solely to avoid the distraint and sale of its property, and the plaintiff here sues to recover \$2,251.66 with interest and costs.

We find little difficulty in determining the matter in dispute. The act of April 28, 1904, repealed the tax upon building associations prescribed in the act of July 1, 1902. It substituted a new provision for their taxation. The slight verbal changes in the new provision are immaterial. By this act Congress directed, speaking from its date, April 28, 1904, that building associations should pay the collector of taxes of this District "two per centum per annum on their entire gross earnings for the preceding year ending June thirtieth." This means that the plaintiff became subject to a tax of 2 per cent on \$108,252.91, its entire gross earnings for the preceding year ending June 30, 1903. There can be no doubt that in respect of building associations the act we are considering speaks from its date, April 28, 1904. The tax was payable by the plaintiff in May of that year. The 4 per cent rate had been repealed. The 2 per cent rate had been enacted. The plaintiff tendered the lawful tax in May, 1904, and the defendant should have accepted such lawful tax. There is no room for discussing whether the act of April 28, 1904, was in its operation retroactive or prospective in respect of the tax on building associations. It went into effect on the day of its approval, so far as building associations are concerned. In amending section 6 it reduced the tax upon savings banks and carefully provided that the amendment should have effect hereafter, beginning with the fiscal year July 1, 1904, and made other amendments to take effect hereafter and certain amendments are prospective. Congress intended to relieve building associations from a tax it deemed too onerous upon them and it plainly expressed its purpose to relieve them by an absolute repeal of the 4 per cent rate before the time that rate was payable and substituted a 2 per cent rate and in terms applied that rate to the entire gross earnings of building associations for the preceding year ending June 30, 1903.

The defendant's argument that the act which went into effect April 28, 1904, should be construed to tax gross earnings for the preceding year ending June 30, 1904, asks us to legislate and to alter and amend a plain and clear enactment which admits of no doubt. It no where appears in this record that the gross earnings returned in this case were not the entire gross earnings. It is not significant that the assess-

ment on the tax books made under the law as it was remained at 4 per cent. The acts of assessors do not limit or vary the power of Congress. Indeed, in both acts, when the return of gross earnings was duly made and its verity not questioned, there was no difficulty in respect of assessment. As the Supreme Court said in another tax case: "No other assessment than that made by the statute was necessary to determine the extent of the bank's liability. An assessment is only determining the value of the thing taxed, and the amount of the tax required of each individual. It may be made by designated officers or by the law itself. In the present case the statute required every savings bank to pay a tax of 5 per cent on all undistributed earnings made or added during the year to their contingent funds. There was no occasion or room for any other assessment. This was a charge of a certain sum upon the bank, and without more it made the bank a debtor." *Savings Bank v. The Supervisors*, 19 Wall., 227, 240.

The learned court below committed no error in deciding that the act of April 28, 1904, was not intended to operate prospectively as the defendant contended by its demurrer.

2d. The court below did not err in deciding that the payment of the money claimed in this action was an involuntary payment, and that the appellee was therefore entitled to recover. We have stated the circumstances under which this payment was made. "A payment made to relieve the person from arrest or the goods from seizure is a payment on compulsion; and so is the payment to prevent a seizure when it is threatened. So, with still greater reason, is the payment which the officer secures by making sale of goods seized. But it is not necessary for the taxpayer to wait for his goods to be sold or even to be seized. If the officer calls upon the person taxed and demands a sum of money under a warrant directing him to enforce it, the party of whom he demands it may fairly assume that if he seeks to act under the warrant at all he will make it effectual. The demand itself is equivalent to a service of the writ on the person." 2d Cooley on Taxation, 1505, 3d ed. And Judge Dillon says: "The payment by the plaintiff must have been made upon compulsion, as for example, to prevent the immediate seizure of his goods or the arrest of the person, and not voluntary." 2d Dillon, Municipal Corp., sec. 940, 4th ed. "Money paid by a person to prevent an illegal seizure of his person or property by an officer claiming authority to seize the same . . . may be recovered back in an action for money had and received, on the ground that the payment was compulsory or by duress or extortion." *Idem*, sec. 942. These authorities were approved by this court, and it was held in *District of Columbia v. Chapman*, 25 App. D. C., 98: 33 Wash. Law Rep., 232, that a payment of money made under circumstances like those under which the payment in this case was made entitled the plaintiff in such case to maintain an action like this for its recovery. The learned court below committed no error in this respect.

The judgment below must be affirmed, with costs, and it is so ordered.

Affirmed.



## Court of Appeals of the District of Columbia.

WILLIAM HARRIS WILSON, APPELLANT,

v.

E. FRANCOIS RIGGS.

## EASEMENTS; IMPLIED GRANTS.

The owner of adjoining lots 54 and 55 erected a house on each, with an area way between. The house on lot 54 was so constructed that the porch, composed of stone and cement, extended several feet over lot 55, and was supported on the adjacent wall of the bay window of the house on lot 55, which bay window, on reaching the fourth story, projected about a foot over lot 54 and was supported by the house thereon. Subsequently he conveyed lot 54, "with its improvements, ways, easements, rights, privileges, and appurtenances," to appellee, and thereafter lot 55 to appellant. Appellee maintained a granolithic pavement as it was at the time of his purchase; the curb encroaching on appellant's lot. In a suit by appellant to compel the removal of the porch, held that the conveyance to appellee carried with it an easement by implied grant under which he was entitled to maintain and use the porch, etc., in the same way these constructions existed at the time of the conveyance to him; and a decree dismissing appellant's bill affirmed; following *Frizzell v. Murphy*, 80 Wash. Law Rep., 208.

No. 1886. Decided May 21, 1906.

APPEAL by complainant from a decree of the Supreme Court of the District of Columbia, in Equity, No. 24,728, dismissing a bill for an injunction. Affirmed.

Mr. R. H. McNeill and Mr. George P. Hoover for the appellant.

Mr. W. G. Johnson and Mr. J. M. Carlisle for the appellee.

Mr. Justice McCOMAS delivered the opinion of the Court:

The appellant, complainant below, by a bill in equity prayed a mandatory order and injunction compelling the removal of a porch covering part of complainant's lot. The court below denied this relief and dismissed the bill. A stipulation in this case shows that Lester A. Barr was the owner in fee of the land at the corner of Thirteenth and Yale streets, Northwest, in Washington, on part of which land the two houses with which we are here concerned stand. He duly subdivided this land into seven lots, from 49 to 55, both inclusive, and the subdivision was duly recorded. While Barr, who was an architect, still owned in fee all of these lots he constructed seven buildings in accordance with plans made by himself, and two of these houses were so built as to provoke this controversy here. Barr built all the houses at the same time. Lot 54 "with its improvements, ways, easements, rights, privileges, and appurtenances" was conveyed to E. Francis Riggs, the defendant below, by deed on June 16, 1901. Barr remained the owner of lot 55 until October 21, 1902, when he conveyed it in fee to the appellant, William H. Wilson. At the time of the conveyance and ever since, the structures and improvements on the two lots remain unchanged. The appellant now complains that the porch of the appellee, composed of stone and cement, was so built as to extend over a space of about 5 feet over the land of the appellant, the porch being supported upon the adjacent wall of the appellant's bay window, and when this bay window reaches its fourth story it projects about a foot over the appellee's land and is sup-

ported by the latter's house. A granolithic pavement is maintained by the appellee as it was when he purchased from Barr. The curb encroaches on the complainant's lot.

The appellant admits that he saw and knew the character and construction of the two houses before he acquired title, but that he did not know how far the appellee encroached upon his lot until he procured a survey. The appellee insists upon the significance of mutual encroachments and mutual support, the convenience and necessity of the porch as now constructed and of the entrance way to the area beneath the porch as appurtenances to his dwelling. There is no dispute that these constructions have always been visible, open, and notorious projections upon the appellant's property, though the defendant did not ascertain the precise extent of the encroachment until he procured a survey to be made. The appellant contends that these constructions are not an easement of necessity. Three witnesses besides the appellant testify their opinion that the porch is not necessary, that it could be pulled down and a new porch built without great expense within the party line, and that such change would not affect the entrance or doors in the appellee's house, and two witnesses on behalf of the appellee testify that such changes as suggested would reduce the rental value, one of them saying it would abate a thousand dollars of the value of the house and lot. After due consideration of the whole case we think that under the rulings of this court in *Frizzell v. Murphy*, 19 App. D. O., 440: 30 Wash. Law Rep., 203, the learned court below committed no error in dismissing the appellant's bill. The facts of that case were like the facts in this, and it was there said:

"The more important question is as to the extent and effect of the alleged implied grant of an easement for the benefit of the house on lot No. 5, as against lot No. 6. Both lots are in the same subdivision and are adjoining each other, and they belonged to the same owner, and the houses on both lots were built by him while he was such owner, and the lot 5, with the building and all improvements, easements, rights, and privileges thereto appertaining, were first conveyed and disposed of by the then owner of both lots. By this severance, what was at that time a mere quasi-easement for the benefit of the building on lot No. 5 became a fixed and permanent easement by implied grant, and the owner thus conveying the one lot as the quasi-dominant tenement could not derogate from his grant or deny to his grantee, or those claiming under the latter, the use and benefit of what was at the time of severance of the unity of ownership an open and apparent easement reasonably necessary to the enjoyment of the part granted. The principle seems to be well settled, both upon principle and authority, that where the owner of both the quasi-dominant and quasi-servient tenements conveys the former, retaining the latter, all such continuous and apparent quasi-easements as are reasonably necessary to the enjoyment of the property pass to the grantee, giving rise to an easement by implied grant."

Barr was an architect, and we may well believe that in his judgment the structures in dispute were reasonably necessary to the enjoy-

ment of the property of the appellee, and also that the encroachment of the appellant's bay window was of like consequence to him. If Barr had applied for an injunction he should not have prevailed in a court of equity, and, as was said in *Frizzell v. Murphy*, supra, 447:

"It is very clear the grantor himself, as the owner of lot No. 6, not having made any such reservation in his grant, could not, with success, have asserted a claim to have the projection removed from the house on lot 5, nor could he have maintained an action against the owner of that lot as for a nuisance, because of such projection. And what he could not do, those who claim under him can not do, because they are equally bound by the grant made by the original grantor of lot 5 as the grantor himself under whom they claim and hold lot 6. They hold the latter lot as the servient tenement of the easement created by the prior agent of William D. Cronin. It was the right of the purchaser, under the prior grant by William D. Cronin, to hold and enjoy the house upon lot 5 in the same condition in which it had been conveyed by such prior grant, and neither Cronin, the prior grantor, nor any subsequent grantee under him of lot 6, could question that right."

We think it unnecessary to review the cases cited by counsel or to consider the question of what is necessary or reasonably necessary where the easement claimed is light or ditches or right of way, or flumes or streams. The question before us is settled in this jurisdiction, nor may we forget the terms of the grant by Barr to the appellee in this case already mentioned, nor that these appurtenances were not only visible but obvious and conspicuous. This court and the Supreme Court of this District in general term, in the case of *McPherson v. Acker, McCa. & M.*, 150, 157, have not limited such appurtenances to those which are absolutely necessary to the enjoyment of the property. It is manifest that the size and appearance of the porch and the convenience of the porch and area way are elements in the value of the property which were part of the consideration and were paid for when the appellee purchased the property from Barr. The appellant now insists, standing in Barr's place, that the porch should be removed or refashioned, although it is clear that such changes would surely injure the appearance of the property and would likely inconvenience the appellee himself or his tenant in the enjoyment of the dwelling-house. We can not agree that the appellant, Barr's grantee, may now deny to the appellee, Barr's prior grantee, the right to maintain and use the porch, the area way, and the pavement in the same way these constructions existed when Barr conveyed the fee and all these appurtenances to the appellee. It was well said that "a grantor can not derogate from his own grant, while a grantee may take the language of the deed most strongly in his favor. The law will imply an easement in favor of a grantee more readily than it will in favor of a grantor." *Wells v. Garbutt*, 132 N. Y., 430; *Paine v. Chandler*, 134 N. Y., 388; see generally *Warner v. Grayson*, recently decided by the Supreme Court.

The order of the court below dismissing the bill will be affirmed, with costs, and it is so ordered. Affirmed.

#### The Consequences of Negligence.

[London Law Journal.]

If A negligently causes an accumulation of gas and B negligently ignites it and causes it to explode, can O, who is injured by the explosion, maintain an action against A? This is the question which arose in *Ogden v. The Gas Light and Coke Company*, and which the Court of Appeals answered in the affirmative. Liability for negligence has been said to depend on its being the "immediate cause" of the damage. Strictly speaking the accumulation of gas can not be the "immediate cause" of an explosion, but, as Sir Frederick Pollock points out, the term "immediate cause" only means in law that some consequences are too remote to be counted. The present case differs but little from *Burrows v. The Marsh Gas and Coke Company*, 41 Law J. Rep. Exch., 46; L. R., 7 Exch. 96, where an explosion of gas escaping from a defective pipe was caused by a plumber resorting to the time-honored method of trying to locate the escape by means of a lighted candle. In that case the defendants who supplied the pipe were held liable; and the fact that they had committed a breach of contract does not seem to make any difference as regards the point whether the damage was the natural consequences of their act. Again, in *Engelhart v. Farrant*, 66 Law J. Rep. Q. B., 122; L. R. (1897) 1 Q. B., 240, the Court of Appeals held that there is no rule of law to prevent a defendant being liable for his servant's negligence whereby an opportunity was given for a third person to commit a wrongful or negligent act which caused the damage complained of. Whether the original negligence was an effective cause of the damage is, said the court, a question of fact in each case. Notwithstanding some show of authority that there is no liability for negligence, when the negligent act of a third person intervenes and is the proximate cause of the damage, the weight of authority is opposed to any such hard-and-fast rule.

The right of the holder of an assessment policy from a company having the right to issue policies on both the assessment and the reserve plans to require the company to continue the issuance of assessment policies, is denied in *Green v. Hartford L. Ins. Co. (N. O.)*, 1 L. R. A. (N. S.), 623.

The adoption of a by-law by a fraternal insurance order, excluding from membership persons engaged in the sale of intoxicating liquors, is held, in *Grand Lodge A. O. U. W. v. Haddock (Kan.)*, 1 L. R. A. (N. S.), 1064, not to avoid the certificate of a member already engaged in that business, and who continued therein after the adoption of the by-law.

The violation of a municipal ordinance as to the manner of stringing the electric light wire which charged a broken telephone wire, or the imperfect insulation of the wire, is held, in *Stark v. Muskegon Traction & L. Co. (Mich.)*, 1 L. R. A. (N. S.), 822, not to be the proximate cause of an injury to a boy who seized the broken telephone wire to receive the shock.

**Customs and Usages—Damages.**

In *Chicago, M. & St. P. R'y v. Lindeman*, decided by the United States Circuit Court of Appeals, Eighth Circuit, in March, 1906 (143 Fed., 946), the following is the syllabus by the court: "A custom must be uniform, certain, and known, or so notorious that a person of ordinary prudence, in the exercise of reasonable care, dealing with its subject, would have been aware of it.

"Where the plaintiff's witnesses testify that there was a custom of doing an act in a certain way and that they followed this custom, and defendant's witnesses testify that they performed the act at the same place during the same time in another way, and no witness contradicts the testimony of the latter or testifies that the alleged custom mentioned by the plaintiff's witnesses was either uniform or universal, it is held that the evidence is insufficient to warrant a finding by a jury that the alleged custom was uniform, and hence the question of its existence should not have been submitted to them.

"The liability for future damages for the wrongful infliction of a personal injury is strictly limited to compensation for such pain and other evil effects as are reasonably certain to result from it. Possible, even probable, future effects are too remote and speculative to form the basis of legal recovery.

"A charge that the plaintiff may recover damages for pain and suffering which may result from the injury in the future is erroneous."

**Confession of One No Evidence Against Another Jointly Tried—Test of Admissibility of Confession.**

In *Sorenson et al. v. United States*, decided by the United States Circuit Court of Appeals, Eighth Circuit, in March, 1906 (143 Fed., 820), it was held that a confession of one of two defendants jointly charged and tried for the same crime is inadmissible against the other when made in his absence and after the crime was committed.

It was further held that the making of a confession by one charged with crime, in order to make it admissible in evidence against him, must have been free, voluntary, and without compulsion or inducement of any kind, and when it appears that an officer of the United States, authorized to investigate the commission of offenses against its laws and to make arrests therefor, either says to an accused who has been arrested and is held in custody that he has an absolutely good case against him, or advises him that the thing for him to do is to plead guilty and throw himself on the mercy of the court, and that another offense against the State laws will then probably be overlooked, a confession so induced, in whole or in part, is inadmissible.

The right of a bank to apply to the personal obligations of a commission merchant money received for produce sent him for sale and deposited by him in his general account in the bank is denied in *Boyle v. Northwestern Nat. Bank (Wis.)*, 1 L. R. A. (N. S.), 1110.

**Monopoly in Express Business.**

A construction of the Texas anti-trust statute, which seems to extend the scope of that enactment, is contained in *State v. Missouri, Kansas & Texas Railway Company of Texas*, 91 S. W., 214, where it is held that the statute (Rev. St., 1895, art 4540), which requires every railroad to furnish reasonable and equal facilities upon reasonable and equal rates to all corporations engaged in the express business, taken together with acts 1903, p. 119, c. 94, defining a trust as a combination to prevent or lessen competition, etc., renders void a contract between a railroad company and an express company whereby the latter was given exclusive privileges, and the former bound itself not to contract with others to do an express business on the road, and agreed that, in case privileges should be accorded others, by legislation or by judicial proceedings, the express company in question should have credit for the sums paid by other companies.

**Competence of Fellow-Servants.**

A rather noteworthy holding on the labor question, and one for which the court cites no precedent, is contained in *Farm v. Kearney*, 39 So., 967, where the court declares that the responsibility of contractors for injuries received by workmen rests upon their freedom of action in respect to the selection of and superintendence over the latter so that when workmen belonging to a labor organization make it a condition of their contract of employment that the employer shall employ only members of the organization, they agree to accept the membership of their fellow-workmen in the organization as a sufficient guaranty for their individual safety and protection.

A grantee from a mortgagor, who takes possession of a strip beyond the true boundary line, is held in *Thornely v. Andrews (Wash.)*, 1 L. R. A. (N. S.), 1036, not to be in adverse possession as against the mortgagee until the mortgage becomes due.

A marine underwriter is held, in *Standard Marine Ins. Co. v. Nome Beach L. & T. Co. (O. C. A. 9th C.)*, 1 L. R. A. (N. S.), 1095, not to be liable for a loss occurring through the deliberate act of the master in pushing through dangerous ice for the purpose of reaching his destination quickly.

A railroad company is held, in *Rodgers v. Choctaw, O. & G. R. Co. (Ark.)*, 1 L. R. A. (N. S.), 1145, to be liable to a passenger thrown to the ground by the starting of a freight train with a jerk while he was on the platform, to which, with the knowledge of the conductor, he had gone for a necessary purpose, the conductor having neither warned him of the danger, nor taken any measures to prevent the starting of the train.

**Contract—Statute of Frauds—Damages.**

In the case of *Schloss et al. v. Josephs et al.*, recently decided by the Supreme Court of Minnesota, it appeared that the appellants gave an order to the respondents for certain suits of clothing to be made of stipulated sizes, materials and styles, and to be delivered within a specified time. The court held that the contract was not within the statute of frauds, and that the measure of damages was the difference between the contract price and the cost of manufacture, including material, labor, etc., for the entire order, and in addition thereto the difference between the cost of manufacturing that part of the order which was filled and shipped less the value of the goods so manufactured and tendered at the date of their rejection by the vendee.

**Adverse Possession.**

A point which the court says is in accord with the unbroken current of authority but nevertheless is of sufficiently rare occurrence to justify giving it notice, is contained in *Garst v. Brutschke*, 105 N. W., 452, where it is declared that where a person executes a deed which by mistake conveys certain land not intended to be conveyed and after the record of the deed pays taxes on the land and fences it so as to include it with an adjoining and larger field, this does not constitute an adverse possession entitling the grantor to hold the land either as against the grantee or a subsequent purchaser from him.

**Scope of Remedy by Mandamus.**

The limitations necessarily inherent in the nature of a writ of mandamus are illustrated in *People ex rel. Bartlett v. Dunn*, 76 N. E., 570, where it is held that a duty to be enforceable by mandamus must be specific, so that the court may prescribe the performance of a definite act or series of acts, and that the writ will not issue where the court would be compelled to control a general course of official conduct, as, for instance, to compel the mayor of a large city to enforce the laws and ordinances providing for Sunday closing the 7,000 saloons of the city.

The failure of the court, in a criminal case, to interpose objections to improper questions made by a jurymen is held, in *State v. Crawford* (Minn.), 1 L. R. A. (N. S.), 839, not necessarily to be reversible error in the absence of objection or exception by counsel.

A right of action for negligently killing a person is held, in *Jordan v. Chicago & N. W. R. Co.* (Wis.), 1 L. R. A. (N. S.), 885, to be an asset of his estate sufficient to warrant appointment of an administrator.

A woman taking her brother into her home, and, without benefit to herself, nursing and performing other menial services for him during his last illness, is held, in *Mark v. Boardman* (Ky.), 1 L. R. A. (N. S.), 819, to be entitled to an allowance of their value out of his estate, although there was no express contract that payment should be made.

The power of a court of equity to prevent majority stockholders from exercising their statutory power to reduce the capital stock in order to relieve defaulting stockholders from meeting their obligations is asserted in *Thels v. Durr* (Wis.), 1 L. R. A. (N. S.), 571.

An exception to the rule that equity will not specifically enforce, as between parties in pari delicto, a contract which is opposed to public policy, is applied in *Seattle Electric Co. v. Snoqualmie Falls P. Co.* (Wash.), 1 L. R. A. (N. S.), 1032, by restraining the breach of a contract to furnish a supply of electricity to a street-car and electric-lighting company upon the ground that such breach would result in a great public inconvenience.

**Habeas Corpus—Findings of Lower Court.**—In habeas corpus to determine the right to the custody of an infant, the finding of the lower court as to the facts has the effect of a verdict of a jury. *Smiley v. McIntosh* (Iowa), 105 N. W. Rep., 577.

**RULE OF COURT.**

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

**Legal Notices.****FIRST INSERTION.**

Geo. E. Fleming, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Jacob F. Raub, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 29th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of July, 1906. LUTHER F. SPIER, 722 North Carolina ave. S. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court No. 13,606. Administration. [Seal.] 30-31

Henry S. Matthews, Solicitor

In the Supreme Court of the District of Columbia.  
*William King et al., Complainants, v. Mary Elizabeth Oxley, Defendant.* In Equity, No. 26,064. Doc. No. —.

Upon consideration of the report of Henry S. Matthews, trustee, of the sale made by him of parts of lots numbered 63 and 64 in square numbered 1190 in that part of the city of Washington and District of Columbia formerly known as "Georgetown," beginning for the same at a point on the east line of 31st street northwest, distant 39 25-100 feet south from the intersection of the dividing line between said lots 63 and 64 with the east line of 31st street, and running thence north with said east line of said street, for a front 56 33-100 feet, and extending back east and of the width of said front, to the east line of a private alley in the rear of said premises, subject, however, to such rights as owners of property abutting on said alley may have over said alley, for the sum of twenty-two hundred and fifty dollars. It is, by the court, this 28th day of July, A. D. 1906, ordered, that said sale be, and the same is hereby, approved, ratified and confirmed, unless cause to the contrary be shown within thirty days from the date hereof. Provided a copy of this order be published for three successive [Seal] weeks in the Washington Law Reporter within the said thirty days. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 30-31

**Legal Notices.**

**Maurice Kelly, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Daniel Paul McCartney, Deceased.**  
 No. 11,276. Administration Docket 30.

Application having been made herein for probate of the last will and testament and codicil thereto of said deceased, and for letters testamentary on said estate, by Mary Virginia McCartney and William Nelson Cromwell, the executors named in said will and codicil, it is ordered this 20th day of July, A. D. 1906, that Mary J. McCartney, otherwise known as Mary McCartney, James Garvey, Thomas Garvey, Mary W. McCaffery, Harry Francis Garvey, William Edward Garvey, Florence Rebecca Garvey, and Ethel Loretto Garvey, and any and all the next of kin and heirs at law of Daniel Paul McCartney, and all others concerned, appear in said court on Monday, the 27th day of August, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 30-St

**James F. Hood, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Mary E. Hood**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 18th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 24th day of July, 1906. **JAMES F. HOOD**, N. W. cor. 15th st., Pa. ave. N. W.; **EVERETT J. DALLAS**, The Baltimore, Wash., D. C. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,697. Administration. [Seal.] 30-St

**L. Cabell Williamson, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Sarah Janette Penicks**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of July, 1906. **L. CABELL WILLIAMSON**, 458 La. Ave. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,799. Administration. [Seal.] 30-St

**John Paul Earnest, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Champe B. Thornton et al. v. Jennie T. Powers et al.**  
 Equity, No. 21,956.

Upon consideration of the report of John P. Earnest, trustee, filed herein, it is, this 24th day of July, A. D. 1906, ordered that said trustee be authorized to accept the offer of Robert M. Gray to purchase, at private sale, for \$2,202.15, lots 4, 5, 6, and 7, in block 5, of the lots decreed to be sold in the above-entitled cause; and, further, that said sale of said lots be ratified and confirmed, unless cause to the contrary be shown on or before the 25th day of August, A. D. 1906. Provided a copy of this order be published in The Washington Law Reporter, The Washington Post, and The Evening Star, once [Seal] a week for three successive weeks before said date. **ASHLEY M. GOULD, Justice.** A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 30-St

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W.

**Legal Notices.**

**C. W. Stetson, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Mary B. Shields**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of July, 1906. **JANE S. ELLIOTT**, 2153 Florida Ave. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,744. Administration. [Seal.] 30-St

**Geo. R. Linkins, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**

**Elizabeth T. Wilson, Complainant, v. William Waugh et al., Defendants.** Equity, No. 26,345.

The object of this suit is to declare the title of the complainant to the south twenty-six (26) feet one (1) inch front by the full depth of original lot six (6) in square one hundred and twenty-two (122) to be good of record in her, in fee simple, by reason of adverse possession. On motion of complainant by her solicitor, **Wm. H. Linkins**, it is, by the court this 25th day of July, 1906, ordered that the defendants, **William Waugh**, **Eliza Waugh**, and the unknown heirs of **A. Fisher**, and **Ezra Varden**, if the said named parties be living, and if dead, their or either of their unknown heirs, devisees, grantees, and alienees, both immediate and mediate, and the unknown heirs of such devisees, grantees, and alienees, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided this order shall be published once a week for three successive weeks in The Washington Law Reporter, and one time each in two daily newspapers, one of which shall be a morning paper, before the said return day, the first publication to be the twenty-seventh day of July, 1906, it appearing to the court upon good cause shown, based upon the affidavit filed herein, that further publication in this cause is unnecessary and that the order of publication heretofore passed was not published as directed. [Seal] (Signed) **ASHLEY M. GOULD, Justice.** A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 30-St

**John A. Butler, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Rose E. Riley v. A. Ada Burke et al.**  
 Equity, No. 26,174.

Upon consideration of the report of John A. Butler, trustee, filed herein, stating that he has sold part of lot 15, square 584, and described in the bill of complaint filed herein, to **Wiegand and Wilson**, for the sum of twenty-seven hundred and five (\$2,705) dollars, it is, this 24th day of July, A. D. 1906, adjudged, ordered, and decreed that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 24th day of August, A. D. 1906. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks prior [Seal] to said return day. **ASHLEY M. GOULD, Justice.** True copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 30-St

**James Rudolph Garfield, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Sarah R. Colgate**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 23d day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 25th day of July, 1906. **JAMES RUDOLPH GARFIELD**, **STEPHEN G. REMINGTON**. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,417. Admn. [Seal.] 30-St

## Legal Notices.

## T. Percy Myers, Attorney

In the Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Frank G. Hanvey, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Tuesday, the 28th day of August, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 23d day of July, 1906. WALTER H. ACKER, Administrator, by T. Percy Myers, Attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,063. Admn. [Seal.] 80-St

## SECOND INSERTION.

## John B. Larner, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Edwin S. Houston, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 6th day of August, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 10th day of July, 1906. THE WASHINGTON LOAN AND TRUST COMPANY, by Andrew Parker, Treasurer; John B. Larner, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,067. Administration. [Seal.] 29-St

## John B. Larner, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Susannah A. Chapman, Deceased.  
No. 13,890. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by the Washington Loan and Trust Company, the executor named therein, it is ordered this 16th day of July, A. D. 1906, that the unknown heirs at law and next of kin of said deceased, and all others concerned, appear in said court on Monday, the 30th day of August, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less [Seal] than thirty days before said return day. WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 29-St

## Leon Tobriner, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Henry Klinge, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the sixth (6) day of August, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 17th day of July, 1906. CATHERINE KLINGE, by Leon Tobriner, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,061. Administration. [Seal.] 29-St

## Legal Notices.

## Balston &amp; Siddons, Attorneys

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Charles R. Rowzee, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of July, 1906. EDWIN C. GRAHAM, 1830 N. Y. ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,761. Administration. [Seal.] 29-St

## Sheehy &amp; Sheehy, Attorneys

In the Supreme Court of the District of Columbia,  
Holding a Special Term as a Probate Court.

In re Estate of Nora Flannery, Deceased.  
Administration, No. 12,569.

Michael A. Lynch, executor of the last will and testament of Nora Flannery, deceased, having reported that he has sold at public auction to Lewis Holmes for the sum of twenty-five hundred and twenty-five (\$2525) dollars, part of lot numbered four (4) in square numbered five hundred and sixty-seven (567), beginning for the said part of said lot at a point in the line of north "F" street one hundred and thirty-six (136) feet east of the southwest corner of said square and running thence north seventy-nine (79) feet; thence west fourteen (14) feet and thence south seventy-nine (79) feet to the place of beginning, together with the improvements, being premises No. 119 "F" street northwest; and also that he has sold to John T. Kenealy, for the sum of twenty-four hundred and fifty (\$2450) dollars, lot marked and lettered "N" in the recorded subdivision of certain original lots in square numbered five hundred and twenty-three (523), made by U. S. Ward, according to the plat of said subdivision as the same appears of record in the office of the surveyor of the District of Columbia, in book B, at page 85, together with the improvements, being premises No. 1234 New Jersey avenue northwest. It is now, this 5th day of July, A. D. 1906, by the court, upon consideration of said report, ordered that said sales be ratified and confirmed unless cause to the contrary be shown on or before the 6th day of August, A. D. 1906. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive [Seal] weeks before said last named date. WRIGHT, Justice. A true copy, Attest: James Tanner, Register of Wills. 29-St

## Nelson Wilson, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Clara O. Richards, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of July, 1906. LOUISA C. RICHARDS, 1217 10th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,801. Administration. [Seal.] 29-St

## In the Supreme Court of the District of Columbia.

Jennie Grey v. Juliette Moore McKey et al.  
Equity No. 24,960.

Upon consideration of the report of L. Cabell Williamson, trustee, filed herein, stating that he has sold lot 77, in square 510, and described in the bill of complaint filed herein, to Mrs. Carrie York for the sum of nine hundred and ten dollars (\$910.00), it is by the court, this 13th day of July, A. D. 1906, adjudged, ordered, and decreed that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 13th day of August, A. D. 1906. Provided a copy of this order be published in The Washington Law Reporter once a [Seal] week for three successive weeks prior to said return day. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 29-St



**Legal Notices.**

**George C. Gertman, Solicitor**  
In the Supreme Court of the District of Columbia,  
Holding an Equity Court.

**Mary V. Morris, Complainant, v. Maria L. Taff et al.,**  
Defendants. Equity No. 26,025.

Upon consideration of the report of the trustees filed herein reporting their conduct in the premises, and the offer of Maria L. Taff, Edward C. Gross, Blanche M. Gross, Robert L. Gross, and Annie E. Chaffee, defendants herein, to purchase the property involved in this suit at and for the sum of nineteen hundred dollars in cash, it is, this 19th day of July, A. D. 1906, by the court ordered that said trustees be and they hereby are, authorized to accept the aforesaid offer and complete the sale accordingly unless cause to the contrary be shown on or before the 8th day of August, A. D. 1906. Provided a copy of this order be published once a week for three successive weeks prior to said date in The

[Seal] Washington Law Reporter. **ASHLEY M. GOULD, Justice.** A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. 29-3t

**Geo. Francis Williams, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**Estate of Robert M. Lockwood, Deceased.**

No. 13,788. Administration Docket 35.

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by Fannie H. Lockwood (widow), it is ordered this 19th day of July, A. D. 1906, that Herbert J. Lockwood, and all others concerned, appear in said court on Monday, the 30th day of August, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY**

[Seal] **M. GOULD, Justice.** Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 29-3t

**Hamilton, Colbert & Hamilton, Solicitors**  
In the Supreme Court of the District of Columbia.  
**Adrian E. Cox, v. Burton Clark et al.**  
Equity No. 23,285.

The object of this suit is to declare the title of the complainant to the real estate situated in the city of Washington, District of Columbia, known as lots numbered twenty-two (22) and twenty-three (23) according to the subdivision made by Alfred Richards of lots in square numbered seven hundred and three (703) as said subdivision appears of record in the office of the surveyor of the District of Columbia, in book 20 at page 154, to be good in fee simple by reason of adverse possession, and to declare the title of complainant to be good in him of record and to perpetually enjoin the defendants from asserting any title to said real estate. On motion of the complainants, by his solicitors, Hamilton, Colbert & Hamilton, it is, by the court, this 16th day of July, A. D. 1906, ordered that the defendants, Burton Clark, Peter Campbell, William Claggett, John Mason, otherwise known as John Watson, Charles Lyons, and the unknown heirs, alienees, and devisees of said Clark, Campbell, Claggett, Mason, otherwise called Watson, and Lyons, cause their appearance to be entered herein on or before the first rule day occurring after the fortieth day exclusive of Sundays and legal holidays after the date of the first publication of this order, otherwise this cause will be proceeded with as in case of default. The court is satisfied upon good cause shown, as appears by the affidavit filed herein, that it is not necessary that this order should be published at least twice a month during the period of not less than three months. This order shall be published at least once a week for four successive weeks before said return day, provided that said order shall be published twice a month in the month of July, 1906, and twice a month in the month of August, 1906. This order shall be published in The Washington Law Reporter, the court not deeming it necessary that the same should be published in any other paper, and no other papers having been selected by the

[Seal] parties. **WRIGHT, Justice.** A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. July 20-27; aug 8-10

Justice blanks of every description for sale at this office.

**Legal Notices.**

**Levi H. David, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Matilda Oger, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of July, 1906. **STEPHEN H. HINES, 1716 14th st. N. W.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,813. Administration. [Seal.]** 29-3t

**Wm. A. McKenney, Attorney.**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Robert Portner, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of July, A. D. 1907, otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of July, 1906. **AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, secretary.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,756. Administration. [Seal.]** 29-3t

**THIRD INSERTION.**

**Supreme Court of the District of Columbia,**  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of John Linquist, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Thursday, the 9th day of August, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 9th day of July, 1906. **G. H. POWELL.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,085. Administration. [Seal.]** 28-3t

**Harry A. Hegarty and Michael J. Keane, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John A. Heenan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of July, 1906. **MARY J. HEENAN, 3210 P st. N. W.** Attest: **WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,791. Administration. [Seal.]** 28-3t

**Chas. W. Claggett, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Carolina Scheuch, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of July, 1906. **CHARLES REPP, Forrestville, Md.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,750. Administration. [Seal.]** 28-3t



## Legal Notices.

J. J. Darlington, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Edwin B. Hay, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of July, 1906. GEO. W. EVANS, Dept. Interior. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,774. Administration. [Seal.] 28-St

S. McNamara and R. S. Huidekoper, Solicitors  
In the Supreme Court of the District of Columbia,  
Holding an Equity Court.

Katherine S. Means, Guardian, et al., Complainants,  
v. William A. Rector et al., Defendants. In Equity,  
25,859. No. Doc. 66.

Upon consideration of the report of the trustees filed herein, on the 11th day of July, 1906, reporting their conduct in the premises and the offer of George D. Farr to purchase the property involved herein at and for the sum of forty thousand dollars, according to the terms set out in the said report, it is, this 11th day of July, 1906, ordered that the said trustees be, and they hereby are, authorized and directed to accept the said offer of the said George D. Farr, and to complete the sale according to the terms of the contract set out herein in this cause, unless cause to the contrary be shown on or before the 12th day of August, 1906. Provided a copy of this order be published once a week for four successive weeks prior to said date in The Washington

[Seal] Law Reporter. By the Court: WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk,  
by Wms. F. Lemon, Asst. Clerk. 28-4t

Wm. E. Ambrose, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Maggie Harrison, Deceased.

No. 18,156. Administration Docket —.

Application having been made herein for letters of administration on said estate, by B. W. Weaver, creditor, it is ordered this 6th day of June, A. D. 1906, that Mary Crumand Olive Bell, and all others concerned, appear in said court on Monday, the 13th day of August, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] WRIGHT, Justice. Attest: M. J. Griffith, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 28-3t

G. F. Williams and H. M. Packard, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Lizzie L. Meade, Deceased.

No. 18,738. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate by Edward W. Jones, executor, and Bertha Gray, executrix, it is ordered this 10th day of July, A. D. 1906, that Madeline Meade (a minor) and all others concerned, appear in said court on Monday, the 13th day of August, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 28-3t

New corporations can procure from the Law Reporter Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated, numbered, and bound.

## Legal Notices.

Wm. D. Hoover, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Mary M. Turner, Deceased.

No. 18,751. Administration Docket —.

Application having been made herein for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by The National Safe Deposit, Savings and Trust Company of the District of Columbia, it is ordered this 9th day of July, A. D. 1906, that Richard Randolph and Mary Wheeler Watson, and all others concerned, appear in said court on Wednesday, the 15th day of August, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 28-3t

Thos. G. Hensley, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Benjamin Franklin Hawkes, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of July, 1906. EMMA ALLYN HAWKES, 611 G st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,695. Administration. [Seal.] 28-3t

Barnard & Johnson, Solicitors for Complainant  
Gittings & Chamberlin and T. Percy Myers, Solicitors for Defendants.

In the Supreme Court of the District of Columbia.

Ernest L. Schmidt, Complainant, v. Ada G. Farhart  
Ross et al., Defendants.

No. 25,522. In Equity.

ORDER NISI.

Ralph P. Barnard, Justin Morrill Chamberlin, and T. Percy Myers, trustees herein, having reported sale of the property, being part of original lot 1 in square 252, beginning for the same at the S. E. corner of said lot and square, and running thence west on G street 60 feet; thence north 38 feet 9 inches; thence east 60 feet to 13th street; thence south 88 feet 9 inches to the place of beginning, in the city of Washington, District of Columbia, to William W. Miller for the sum of \$20 per sq. ft., there being according to the plat 2,325 sq. ft. of ground contained in said property, making the total purchase price \$46,500; it is, this 6th day of July, A. D. 1906, ordered that the said sale be finally ratified and confirmed, unless good cause to the contrary be shown on or before the 7th day of August, 1906. Provided that a copy of this order be published in The Evening Star newspaper and The Washington Law Reporter once a week for three (3) successive weeks before the aforesaid day. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by Fred. C. O'Connell, Asst. Clerk. 28-3t

Julius A. Maedel, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Jacob Miller, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 10th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 10th day of July, 1906. WILHELMINE S. MILLER, W. CLARENCE MILLER, 617 C st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,752. Admn. [Seal.] 28-3t

# The Washington Law Reporter

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WASHINGTON, D. C. - - - - AUGUST 3, 1906

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## Changes in the Office of the United States Attorney for this District.

Mr. James S. Easby-Smith, for some time an assistant in the office of the United States Attorney for this District, has resigned that position, to take effect August 31, 1906. In his retirement the Government loses the services of a very capable official. Mr. Easby-Smith gave up a responsible position with the Department of Justice to accept the appointment as assistant United States Attorney for this District, and in the latter position he has rendered valuable service. He has participated in many of the more important cases coming before the criminal courts, and in a number of them conducted the prosecution on behalf of the Government. For the past year he has frequently appeared in the Court of Appeals on behalf of the United States in cases in which United States Attorney Baker was disqualified by having been counsel for the appellants in the court below. He has shown himself to be a well-equipped lawyer. Mr. Easby-Smith resigns to give his entire attention to his private practice. It is stated that he will form an association with Mr. Wilton J. Lambert.

The retirement of Mr. Easby-Smith will be followed by the promotion of Mr. James M. Proctor, who has been a law clerk in the office of the United States Attorney for some time, receiving that appointment shortly after his admission to the bar. The promotion is based on merit, as Mr. Proctor has proven a very effi-

cient aid in the important duties of the office. He is a young man of good ability, and in the more responsible position to which he has been promoted may confidently be expected to give good account of himself.

Mr. Frank Sprigg Perry, of this city, has been appointed as a law clerk in the office to fill the vacancy caused by the promotion of Mr. Proctor. Mr. Perry is a recent graduate of the Georgetown University Law Department, in which institution he made a fine record for scholarship. His discharge of the duties of his new position will doubtless be thorough and satisfactory.

## Amendment to the Code.

SEC. 491a. Whenever land is needed for the opening, extension, widening, or straightening of any street, avenue, road, or highway in the District of Columbia, authorized by Congress, the Commissioners of the District of Columbia may institute, in the supreme court of the District of Columbia, sitting as a district court, by petition, a proceeding in rem for the condemnation of the land needed.

SEC. 491b. Such petition shall contain a particular description of the land to be condemned and the names of the owners of the fee of said land and their residences, so far as the same may be ascertained, together with a plan of the land to be taken.

SEC. 491c. The said court shall cause public notice of not less than twenty days to be given of the institution of such proceeding, by advertisement in three daily newspapers published in the District of Columbia, which notice shall warn and require all persons having any interest in the proceeding to appear in court at a day to be named in said notice, and to continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits by the jury herein provided for; and in addition to such public notices said court shall cause a copy of said notice to be served by the United States marshal for the District of Columbia, or his deputies, upon such owners of the land to be condemned as can be found by said marshal, or his deputies, within the District of Columbia, and upon the tenants and occupants of the same. The said court shall appoint a guardian ad litem for any person interested in the proceeding who may be under disability.

SEC. 491d. After the return of the marshal and the filing of proof of publication of the notice provided for in the preceding section said court shall cause a jury of five experienced, judicious, disinterested men, who shall be freeholders within the District of Columbia, not related to any person interested in the proceeding and not in the service or employment of the District of Columbia or of the United States, to be summoned by said marshal, to which jury the court shall administer an oath or affirmation that they are not interested in any manner in the land to be condemned, and are not related to the parties interested therein, and that they will, without favor or partiality, and to the best of their judgment, ascertain the damages

each owner of land to be taken may sustain by reason of the opening, extension, widening, or straightening of said street, avenue, road, or highway, and the condemnation of the land needed for the purpose thereof, and to assess the benefits resulting therefrom as hereinafter provided.

SEC. 491e. The court, before accepting the jury, shall hear any objections that may be made to any member thereof, and shall have full power and authority to pass upon any such objections, and to excuse any juror or cause any vacancy in the jury, when empaneled, to be filled; and after the jury shall have been organized and shall have viewed and examined the land and premises affected by the condemnation proceeding they shall proceed, in the presence of the court, to hear and receive such evidence as may be offered or submitted on behalf of the District of Columbia and by any person or persons having any interest in the proceeding. When the hearing is concluded, the jury, or a majority of them, shall return to the court, in writing, their verdict, setting forth the amount found to be due and awarded to the owners of the land to be condemned as damages by reason of said opening, extension, widening, or straightening of said street, avenue, road, or highway, under the provisions hereof, and the lots, pieces, or parcels of land benefitted by said opening, extension, widening, or straightening, and the amounts of the assessments for the benefits against the same.

SEC. 491f. If a part only of any lot, piece, or parcel of ground is to be condemned, the jury, in determining its value, shall not take into consideration any benefits that may accrue to the remainder thereof from said opening, extension, widening, or straightening of said street, avenue, road, or highway, but such benefits shall be considered by the jury in determining what assessment shall be made or levied against such part of such lot, piece, or parcel of land as may not be taken as hereinbefore provided.

SEC. 491g. That of the amount found to be due and awarded as damages for and in respect of the land to be condemned for said opening, extension, widening, or straightening, plus the costs and expenses of the proceeding, such amount shall be assessed by the jury as benefits, and to the extent of such benefits against the lots, pieces, or parcels of land on each side of the street, avenue, road, or highway to be opened, extended, widened, or straightened, and against any and all other lots, pieces, or parcels of land which the jury may find will be benefitted by the opening, extension, widening, or straightening, as the jury may find said lots, pieces, or parcels of land will be benefitted; and in determining the amounts to be assessed against said lots, pieces, or parcels of land the jury shall take into consideration the respective situations and topographical conditions of said lots, pieces, or parcels of land, and the benefits and advantages they may severally receive from the opening, extension, widening, or straightening of the street, avenue, road, or highway. If the total amount of the damages awarded by the jury and the costs and expenses of the proceeding be in excess of the total amount of the assessments for benefits, such

excess shall be borne and paid by the District of Columbia.

SEC. 491h. The said court shall hear and determine any objections or exceptions that may be filed to any verdict of the jury and shall have power to vacate and set any verdict aside, in whole or in part, when satisfied that is unjust or unreasonable, in which event the court shall cause a new jury of five experienced, judicious, disinterested men, who shall be freeholders in the District of Columbia, not related to any person interested in the proceeding and not in the service or employment of the District of Columbia or of the United States, to be summoned, who shall proceed to ascertain the damages or assess the benefits, or both, as the case may be, in respect of the land as to which the verdict may be vacated, as in the case of the first jury: *Provided*, That if vacated in part, the residue of the verdict as to the land condemned or assessed shall not be affected thereby: *And provided further*, That the objections or exceptions to the verdict shall be filed within twenty days after the return of the verdict to the court.

SEC. 491i. When the court shall have finally ratified and confirmed the verdict of a jury condemning the land needed for the opening, extension, widening, or straightening of the street, avenue, road, or highway, the amounts of money found to be due and awarded to the owners of the land condemned shall be paid to such owners by the disbursing officer of the District of Columbia from moneys advanced to him by the Secretary of the Treasury, upon requisitions of the Commissioners of said District, as provided by law.

SEC. 491j. When finally ratified and confirmed by the court, the several assessments authorized to be made or levied by the jury shall severally be a lien upon the land assessed, and shall be collected as special-improvement taxes in the District of Columbia, and shall be payable in five equal annual installments, with interest at the rate of four per centum per annum from and after sixty days after the confirmation of the verdict of the jury. In all cases of payments the accounting officers shall take into account the assessments for benefits and the award of damages, and shall pay only such part of the award in respect of any lot, piece, or parcel of land condemned as may be in excess of the assessment for benefits against the part of such lot, piece, or parcel of land not taken, and there shall be credited on said assessment the amount of said award not in excess of said assessment.

SEC. 491k. Said court shall have full power and authority, at any time, to allow amendments in form or substance in any petition, process, verdict, record, or other proceeding, or in the description of property proposed to be condemned or of property assessed for benefits whenever such amendment will not interfere with the substantial rights of the parties interested.

SEC. 491l. Each juror shall receive as compensation for his services the sum of five dollars per day for every day necessarily employed in the performance of the duties herein prescribed.

SEC. 491m. Any party aggrieved by any final order of the court may appeal therefrom to the

court of appeals of the District of Columbia; but no appeal from any order of the court confirming any award of damages or assessment for benefits, nor any other proceeding that may be taken by any person, at law or in equity, against the confirmation of any award of damages or any assessment for benefits shall delay or prevent the payment of the damages awarded to other persons in respect of the property condemned, or delay or prevent the taking of the property sought to be condemned, or delay or prevent the opening, extension, widening, or straightening of the street, avenue, road, or highway.

SEC. 491n. In case any of the owners of the land condemned are under disability or can not be found or neglect to receive the money awarded to them, or in case the title to the property condemned is in controversy, the money awarded to any of such persons, or for any such property the title to which is in controversy, shall be deposited in the registry of the supreme court of the District of Columbia, without cost or expense to said District, to the credit of the person or persons who may be entitled thereto.

### Court of Appeals of the District of Columbia.

JACOB KEROES, APPELLANT,

v.

JOHN L. WEAVER AND CHARLES H. WEAVER.

#### TRESPASS; UNLAWFUL EVICTION; EVIDENCE; INSTRUCTIONS.

1. In an action of trespass to recover for injuries to plaintiff's stock of goods caused by an unlawful eviction from premises rented by him, where it appeared that certain goods, alleged to have been damaged by the removal, had been sold at auction, the exclusion of entries in the books of the auctioneer showing the goods sold and the amount realized held not error where the witness producing the book, a clerk of the auctioneer, did not himself make the entries, and had no knowledge of them, and where he was permitted to state the amount for which the auctioneer accounted to the plaintiff.
2. The refusal of the trial court to instruct the jury that in estimating the damages they might consider the difference between the value of the goods at the time of their seizure and removal by defendants and at the time of their redelivery to the plaintiff held not reversible error when the evidence was insufficient to afford a proper basis for such a comparison.

No. 1085. Decided April 10, 1906.

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 47,000, entered upon the verdict of a jury in an action of trespass. Affirmed.

*Mr. Hayden Johnson* and *Mr. C. A. Keigwin* for the appellant.

*Mr. A. A. Birney* and *Mr. H. F. Woodard* for the appellees.

*Mr. Justice McCOMAS* delivered the opinion of the Court:

This is an action of trespass instituted by Jacob Keroes, appellant, against John L. Weaver and Charles H. Weaver, appellees. The appellant occupied and carried on his business as a merchant tailor in one of the storerooms of James H. Rowland, who owned a building standing at Fourteenth and G streets where the Commercial National Bank is located. The appellees were Rowland's agents for the collection of his rents. In January, 1904, the appellant

was a tenant from month to month for the storeroom mentioned. On January 26th the appellees served notice to appellant to quit on March 15th, following. The appellant remained therein. The appellees brought suit for possession before a justice of the peace and obtained judgment on March 29th. The appellant appealed and perfected his appeal to the Supreme Court of the District of Columbia. During the night of April 1st, the appellees broke and entered the premises occupied by the appellant, and removed from the storeroom all of his goods, consisting of suits of clothes, cloths, and fixtures, and placed them in a warehouse, and on the next day notified the appellant of their whereabouts.

At the trial of this action of trespass the appellant offered evidence that his stock had been damaged by reckless packing, and by dust and mortar in the boxes. There was a verdict and judgment for \$300 for the appellant. The appellant appealed and assigns as error that the court refused to allow the appellant to show the amount of money received for the quantity of his damaged goods sold at auction.

At the trial the court ruled that the jury should find that the appellees were guilty of trespass in disturbing the appellant's possession, and therefore their verdict should be for the appellant. The appellant testified that the value of his stock was \$8,000 and that after the trespass and removal of his goods the uninjured goods fit for use were worth about \$500, and testified that he had sold, in July, 1904, thirteen suits, which before removal were worth \$580, to a dealer for \$116.25, and that sum was a fair price in the condition in which they were delivered to the purchaser. The appellant further testified that he sent to the auction house about 200 yards of woolen goods which had been removed and damaged in removal, which goods had cost him from three to five dollars per yard, and the auction house had sold them upon the appellant's account. He had stated the amount the goods brought at auction, but this testimony upon objection was stricken out. The clerk of the auction house produced a book which, as he testified, contained the record of the appellant's goods sold and the price obtained therefor. The appellant offered this record in the book and offered the entries therein to show the jury the amount he had received from the auction sales. The court excluded the book and the record of the sales therein. To this the appellant excepted. It appears that the witness was permitted to testify that \$72 was the sum total of this sale for which the auction house had accounted to the appellant. It does not appear that the clerk who presented the book had made the entries, nor that he had personal knowledge of the amount of the sale of the appellant's goods, at his auction house, but it seems, as we have said, that he was permitted to testify to the fact of the amount of sales, when he told the jury the amount for which the auction house accounted to the appellant. The appellant was not prejudiced by the court's action, therefore, and we find no reversible error in the exclusion we have discussed.

We need not consider whether or not the amount of the auction sale is competent evidence of the value of the goods, because the

fact was substantially before the jury. It does not appear the court erred in refusing to let the clerk testify to the amount of the book entries of the sale, because it does not appear that the clerk had such knowledge as enabled him to refresh his memory from the entries, and he was permitted to testify without the book to the same effect.

It is urged that the court erred in refusing to instruct the jury that the plaintiff was entitled to recover from the defendant such actual damage as they may find from the evidence the plaintiff sustained on account of injury done to his stock in consequence of the eviction, and further in not instructing the jury in estimating the damages to consider "the difference in value of said goods at the time of their seizure and removal and at the time of their redelivery to the plaintiff."

The record shows that the appellant testified his stock was worth \$3,000, and the value of the uninjured goods was not more than \$500. There was very little evidence as to the value of the uninjured goods. The auction sale of several hundred yards of cloth, injured by removal, was given to the jury in the form we have stated. If other cloths were injured, to what extent was not told the jury. It was in evidence that thirteen suits worth \$580 before the eviction were sold in the summer after the eviction for \$116.25. What other garments were injured and to what extent they were injured does not appear. So far as the record shows, the fixtures and tools of the merchant tailor were uninjured.

We can not say that the court erred in refusing the otherwise proper comparison of the difference in value at the time of their removal and at the time of their redelivery, for we assume the appellant's prayer meant a comparison between the value of the goods before the eviction and the value of the goods at the time of their redelivery to the appellant. The evidence on behalf of the appellant stated the value of all of the goods at the time of their removal, and that the uninjured goods were worth \$500. In respect to the injured goods, appellant gave evidence tending to show that after redelivery to the appellant, the value of a part was ascertained by the sale of 13 suits of clothes and about 200 yards of cloth. If before removal the cloths uncut and the garments made up were believed by the jury, with the fixtures, to be worth \$3,000, and \$500 worth of the goods only were uninjured, then only a small part of the injured goods and the value thereof as ascertained by the sale of them, was submitted to the jury to consider; too small a part to enable the jury to make a comparison of the value of all the goods before the removal with the value of all the injured goods after the removal. We should not reverse this judgment because the court refused to tell the jury to make the comparison, because the evidence was so defective that the ruling asked by the appellant may well have been refused on account of the insufficiency of the evidence to enable the jury to make such comparison and may have been refused for that reason. The court did instruct the jury that they must find for the appellant, and that they might award him the actual damages sustained by him from the injury to his stock and

furniture as the result of the eviction, and also that they might find punitive damages if they found that the appellees evicted the tenant with bad intent and in pursuance of an unlawful purpose fraudulently to take possession of the property. In its oral instruction the court told the jury they should find from the evidence how much money would compensate him for the injury done to his goods, if they found any injury had been done in packing and carrying them away; that is, how much damages appellant suffered; and among the many elements to be considered, the court reminded the jury that the appellant had a large stock, and that they should consider the size and value of the stock and the character of the injury done to it, and, as men of good judgment, to consider that matter in ascertaining the amount of damages the evidence warranted them in giving.

The appellant's counsel rightly contends that the instructions of the court might have been more helpful in guiding the jury, and insists that the small verdict shows the error of the court's ruling, especially in rejecting the prayer we have mentioned. But since we think the evidence recited in the bill of exceptions was too meager to invite a jury to make comparative estimates of value at the different times mentioned in the instruction asked, we are not satisfied that the instruction actually given was insufficient. The instruction might have been improved, but the case was so simple that the instruction given sufficed to enable the jury to compensate the appellant by their verdict for all injuries to the appellant's goods which happened to them by reason of the unlawful eviction of the appellant by the appellees.

We are not convinced that under the circumstances there was reversible error.

This judgment must be affirmed with costs, and it is so ordered. Affirmed.

JULIAN COSTILLO SLAUGHTER ET AL.,  
APPELLANTS,

v.

OSCEAL R. LOEB, EXECUTOR OF SAMUEL  
E. LOEB, DECEASED.

CONTRACTS; WRITTEN AGREEMENT CONSTRUED.

By a contract between S. and the Republic of Mexico it was agreed that the former should receive, for services to be rendered by him in establishing the fraudulent character of certain claims, the money for the settlement of which had been paid by Mexico to the United States, 10 per cent of the sum recovered. Prior to this time a portion of the money had been paid by the United States to the claimants. When the fraudulent nature of the claims had been established, the United States paid over to Mexico the balance in its hands, and subsequently Congress appropriated for payment to that Republic of the amounts paid by the United States to the claimants. S., for considerations recited in the contract, assigned to L. a two-fifths interest in his contract or agreement in respect of one of the claims. The Mexican government paid S. 10 per cent on the entire amount recovered. Held, construing the agreement between S. and L., that the latter was entitled to two-fifths of the amount received by him on account of the claim to which his assignment related, including both the amount of the balance in its hands paid over by the United States to Mexico and the amount appropriated by Congress to repay that previously paid to the fraudulent claimants.

No. 1640. Decided June 5, 1906.

APPEAL from a decree of the Supreme Court of the District of Columbia, in Equity, No.

23,234, making distribution of a fund in the hands of a receiver. Affirmed.

*Mr. A. S. Worthington, Mr. J. J. Darlington, Mr. W. J. Lambert, and Mr. C. L. Frattley* for the appellants.

*Mr. W. A. Maury* for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This is an appeal from so much of a general decree of the Supreme Court of the District, making distribution of a fund in the custody of the court, as directs the payment to Samuel E. Loeb therefrom of the sum of \$6,875.58.

Samuel E. Loeb having died pending the appeal, his executor, Cecil R. Loeb, has been substituted as a party.

The history of the origin of the fund in the custody of the court has been given in the statement of the case of Jones and Lines v. Julian A. Slaughter and others, supra.

Mexico, having reason to believe that the award in favor of Benjamin Weil had been procured through fraudulent practices, soon thereafter entered into the following contract with James E. Slaughter for the purpose of invalidating the same:

"This agreement, made this 9th day of March, A. D. 1877, by and between General James E. Slaughter, of Mobile, Ala., party of the first part, and Señor Don Ignacio Mariscal, Minister of Mexico to the United States, party of the second part.

"Witnesseth, That the said party of the first part agrees, for the considerations hereinafter named, to undertake the proof and establishment before the proper authorities of the Government of the United States of America of the fraudulent character of the claim of Benjamin Weil versus Mexico, numbered 447 upon the register of the late Joint Commission of the United States and Mexico and adjudicated by the umpire thereof.

"And the said party of the second part acting for and in behalf of the Government of Mexico, agrees, immediately upon the final withdrawal or waiver by the proper authorities of the Government of the United States, whether by treaty, executive order or otherwise, of the whole or any portion of the said claim of Benjamin Weil versus Mexico to pay to the said party of the first part, by draft upon the National Treasury of Mexico, payable in Mexican gold ten months after presentation a sum equal to one-tenth of the portion of said claim which may be so waived or finally withdrawn, or of the whole amount if it be so waived or withdrawn.

"In witness whereof we have hereunto set our hands and seals this ninth day of March, A. D. 1877.

JAS. E. SLAUGHTER.  
IGNO. MARISCAL."

It is apparent from the evidence that Slaughter, after entering into the aforesaid contract, had an understanding with Loeb in accordance with which Loeb furnished important evidence in the ensuing litigation.

On November 2, 1894, Slaughter and Loeb executed the following contract of assignment, under which the claim of Loeb has been maintained:

STATE OF LOUISIANA, }  
Parish of Orleans, City of New Orleans. }

Be it known that on this second of November

of A. D. one thousand eight hundred and ninety-four, I James E. Slaughter a citizen of the United States of America, by these presents hereby transfer, and assign, and bind myself, my heirs, and my assignees unto Samuel E. Loeb, his heirs and assignees (2-5) two-fifths interest in my contract and agreement, which I have entered into, with the duly and legal representative of the United States of Mexico, in the city of Washington, D. C. on the ninth day of March one thousand eight hundred and seventy-seven, to wit: One Benjamin Weil had an award made, by the umpire of the Joint Commission of the Republic of Mexico and the United States of America on a claim, which I have proved thus far, as a fraudulent claim, and now by act of Congress, the said claim is pending before the United States Court of Claims, and may be appealed, to the Supreme Court of the United States of America, and upon the decision of these tribunals, in favor of the Republic of Mexico, or as the case stands now, the United States of America vs. all the parties interested in the Benj. Weil case to show cause, etc. It is agreed that I James E. Slaughter am to receive, for services rendered in the above case (1-10) one-tenth of any amount, which may be waived or withdrawn and refunded by the Government of the United States of America to the Republic of Mexico, all of said award having been deposited by Mexico, to the Government of the United States at Washington. I am to be paid out of said fund, now on deposit as per my agreement and contract, now and therefore I James E. Slaughter, hereby agree and bind myself unto Samuel E. Loeb his heirs and assigns to pay in the same manner and out of the said fund, which I will receive, and now deposited in Washington D. C. unto the said Samuel E. Loeb (2-5) two-fifths of my interest, for valuable Books and papers furnished, and other valuable services rendered to me. Reserving, that whenever my expense account is established, Mr. Samuel E. Loeb is to bear his pro rata, not to exceed however Two Thousand Dollars as his pro rata, and I further agree, that whenever I am in possession of my part and interest, I will without any unnecessary delay, and with all due diligence pay and settle with Samuel E. Loeb, heirs or Assigns.

Signed in duplicate in the presence of two competent witnesses and in the presence of, and now in addition, for services rendered by Robert B. Lines Attorney at Law at Washington D. C. I have interested him to the extent of Fifteen Hundred Dollars Two fifths of this amount is to the debit of S. E. Loeb and his proportion to be deducted from the amount to be paid to him by me.

JAMES E. SLAUGHTER.  
SAM'L E. LOEB.

O. H. STOCKER.

LOUIS U. GERBIT.

It appears that while attempts were being made to annul the award to Weil, Mexico continued to pay over to the Secretary of State of the United States the money due under the awards that had been made, in the instalments provided in the convention under which the "Mixed Claims Commission" had been organized.

Of the moneys so received, from Mexico, the Secretary of State paid to Weil the sum of \$171,889.84.

After the Court of Claims, in the suit instituted under the authority of an act of Congress for the purpose, had adjudged the Weil claim and award void, the United States paid Mexico all of the money remaining on deposit with the Secretary of State.

Mexico paid Slaughter his one-tenth thereof, and Slaughter appears to have paid Loeb his two-fifths thereof, after deducting certain expenses, as provided in the contract of assignment aforesaid.

The United States afterwards recognized their moral obligation to refund to Mexico the amount of money deposited by the latter which had been paid over to Weil pending the litigation.

The appropriation of the money was made February 14, 1902, and shortly thereafter the same, amounting to \$171,889.64, was paid by the United States to the Ambassador of Mexico.

Slaughter died in the city of Mexico on January 2, 1901, where he had gone to induce the Government of Mexico to increase the compensation for his services under his original contract.

Having received the payment aforesaid, the Ambassador, recognizing the right of Slaughter to one-tenth thereof under his said contract, paid over the sum, amounting to the sum of \$17,188.96, to the receiver who had in the meantime been appointed to receive the money due Slaughter on this and another account. See statement in *Jones v. Slaughter*, supra.

The question involved in this case is whether Loeb is entitled under the said contract of assignment to two-fifths of Slaughter's said fund of \$17,188.96 in the Weil case.

The learned justice who rendered the decree held that he was, and we are of the opinion that he was right.

Although Slaughter represented Mexico in the matter of obtaining the legislation necessary to the review of the Weil and the La Abra Company awards, and afterwards, in person and through his associates, Jones and Lines, worked to secure the return to Mexico of the money that had been received by the said parties, no additional contract was made with him in relation thereto.

Slaughter's right to the one-tenth of this last payment on account of the Weil claim and award was recognized by Mexico as conferred by the terms of his original contract. In his contract with Loeb, executed in 1894, Slaughter transferred and assigned to Loeb "two-fifths interest in my contract and agreement," following the same with a brief recital of his contract with Mexico.

While these words of assignment plainly extend to the whole of Slaughter's interest in said contract, it is contended, on behalf of the appellants, that they are restricted by the subsequent recitals to two-fifths of Slaughter's interest in the money that had been paid to the United States, and was then actually in deposit with the latter. It is true, as we have seen, that all of the money deposited by Mexico on account of the Weil award was not then in the possession of the United States, because the Secretary of State had some time before paid over to Weil therefrom the said sum of \$171,889.64, consequently the Slaughter fee or interest, the distribution of which is the subject

of this suit, was paid by Mexico, not out of the money then on deposit, but from the money appropriated by the United States to refund to Mexico the sum that had been improvidently paid to Weil out of that deposit.

The contention is based not only on the original contract entered into between Slaughter and Mexico before any money had been deposited, but also on the following additional recital in the Loeb contract made thereafter:

"It is agreed that I, James E. Slaughter, am to receive for services rendered in the above case one-tenth of any amount which may be waived or withdrawn and refunded by the Government of the United States of America to the Republic of Mexico, all of said award having been deposited by Mexico to the Government of the United States at Washington. I am to be paid out of said fund now on deposit as per agreement and contract. Now, I therefore agree and bind myself unto said Samuel E. Loeb, his heirs and assigns, to pay in the same manner and out of said sum which I will receive and now deposited in Washington, D. C., unto the said Loeb two-fifths of my interest for valuable books and papers furnished, and other valuable services rendered me."

In our opinion the contract between Slaughter and the representative of Mexico contemplated the payment to Slaughter of one-tenth of the entire sum that might be saved or refunded to Mexico as the result of vacating or annulling the Weil claim on the ground of fraud. Whether ambiguous in that respect or not, both Slaughter and the representatives of Mexico had that understanding of its meaning and acted thereon, without disagreement, from the time of its execution.

Slaughter, having received his portion of the deposited fund after its payment, set about procuring the legislation which led to the payment of the last sum, without any additional contract relating thereto; evidently believing that it was within the scope of the one under which he had been acting. When the appropriation had been made and the money thereunder paid over to the representative of Mexico, the latter recognized Slaughter's right under the same contract to one-tenth of the collection. In accordance with that recognition of Slaughter's right, he paid the money, Slaughter being then dead, to the person appointed by the court to receive it pending proceedings for its proper distribution. Clearly, therefore, it does not lie in the mouth of one claiming under Slaughter to say now that this money was paid as a mere gratuity. Nor is there the slightest evidence to raise the inference that there was some other possible contract in requital of which the payment might have been made.

The testimony offered by Loeb concerning declarations made to him by Slaughter is not competent for the reasons given in the case of *Jones v. Slaughter*, supra.

The only competent evidence, in addition to the contract, of their relations is to be found in a letter proved to have been written by Slaughter to Loeb on October 31, 1900, in the postscript to which, after referring to his petition to the Government of Mexico, he says: "As soon as Congress meets will introduce a bill to refund amount on Weil claim." While this is vague



and indefinite, it is a slight circumstance tending to show that he regarded Loeb as having some interest in the money which he hoped to have Congress refund to make good that which had been paid out on the Well claim.

From the language of the contract with Loeb alone, however, we think it reasonably clear that Slaughter intended to, and did transfer to Loeb two-fifths of the entire fee which he expected to receive from Mexico on the fulfillment of his contract; and that contract, as we have before held, applied to the fund paid by the United States to Mexico from which the fund in controversy was realized.

It follows that the decree must be affirmed, with costs, and it is so ordered. Affirmed.

LOUIS L. WATSON, APPELLANT,

v.

HOWARD M. CARVER.

ALLEYS; DEDICATION; PRIVATE WAY; EASEMENT; ESTOPPEL.

C, owner of a lot in this city, subdivided it into lots 32, 33, and 34, with a 5-foot alley in the rear. The subdivision was recorded, and subsequently he sold the lots to A, who built houses thereon. A sold lot 32 to appellee, and on the rear of that lot, and as an inducement to appellee to purchase it, he erected a shed which extended partly over the alley. Thereafter he sold lot 33 to appellant, who purchased with notice that the shed in question extended over the alley. At the time the subdivision was recorded the laws in force in the District required public alleys to be not less than 10 feet wide. In a suit by appellant to compel the appellee to remove the shed from the said 5-foot alley, *held*—

1. That the provision of the law requiring public alleys to be at least 10 feet wide not having been complied with, the proposed alley did not become a public way, the public acquired no right of way over it, and no title therein vested in the United States.
2. That the admission to record of the plat of the subdivision did not amount to an acceptance of the alley by the Commissioners of the District.
3. That the said alley did not constitute a private way, it appearing that before any one acquired rights in, to, or over it as a private alley or easement it had been closed by the act of A in erecting the shed.
4. That A being estopped from insisting upon the removal of the shed by the fact that he located its position and built it and thereby induced appellee to purchase the property, appellant, as the subsequent grantee of A, and having purchased with knowledge of the existing conditions, is likewise estopped.

No. 1645. Decided May 21, 1906.

APPEAL by complainant from a decree of the Supreme Court of the District of Columbia, in Equity, No. 24,472, dismissing a bill for an injunction. Affirmed.

Mr. Joseph H. Stewart for the appellant.

Mr. Arthur Peter for the appellee.

Mr. Justice DUELL delivered the opinion of the Court:

There is an appeal from a decree dismissing a bill of complaint filed by appellant whereby he sought to have the appellee remove a shed from an alleged public alley in the city of Washington, the use of which alley was averred to be necessary for the full enjoyment of appellant's property.

The parties to this appeal are owners of adjoining lots and derive their title from a common source. One Caldwell, in 1897, being then the owner of lot 14, in square 882, filed in the office of the Commissioners of the District of Columbia a proposed subdivision of it into three lots which became known as Nos. 32, 33,

and 34, with a proposed alley 5 feet wide at the rear. The plat was admitted to record in the office of the District of Columbia under date of July 7, 1898. On the following November Caldwell conveyed the lots in question, together "with all the improvements, ways, easements, rights, privileges, appurtenances, and hereditaments to the same belonging or in anywise appertaining," to one Atchison, who, under a permit issued December 1, 1897, commenced the erection of three houses, one upon each of the lots. On April 1, 1898, Atchison conveyed lot 32, which was the corner one, "together with all and singular the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging, or in anywise appertaining," to the appellee Carver. At that time a house and shed had been erected on the lot, the latter having been built at the request of appellee, who was a produce dealer, for the shelter of his horse and wagon. It seems that the shed extended on to the proposed alley, although appellee did not know it at the time it was built or when he purchased. The partial location of the shed on the proposed alley is the cause of this controversy.

Subsequent to the sale of lot 32 to the appellee, and by deed dated February 8, 1900, Atchison sold lot No. 33 to the appellant. Prior to that date, and on July 20, 1899, Atchison had written to the District Commissioners stating that he had built the three houses, and that by mistake of his carpenter the sheds had been built upon the alley, and asking them to compel the appellee, to whom he had sold one lot, to remove the shed. On August 3, 1899, the Secretary to the Commissioners, under their direction, notified Atchison that the alley was not a public alley and they were without power. A second attempt was made by Atchison a few days later which met with the same fate. Later on in November, 1900, the matter was referred to the attorney for the District, who reported to the Commissioners that the alley was not a public alley, was of no public use, and said that Atchison, "the only one of the public directly interested therein, seems to have ignored it and to have built upon it and the appeal now made comes with very bad grace from him." It further appears that under an act of Congress approved August 27, 1888, it was provided that all spaces on any duly recorded plat of land thereon designated as streets, avenues, or alleys, should become public ways, provided they conformed to the provisions of section 1 of the act. That section gave to the District Commissioners authority to make and publish general orders necessary to regulate the platting and subdividing of lands. Being vested with such authority the Commissioners, in December, 1888, made certain general orders relative to alleys. By them it was provided that "no public alley in the city of Washington or Georgetown shall be less than 10 feet in width."

The testimony of the appellant shows that before he bought his house and lot from Atchison he inspected the property and was told by Atchison that the sheds on the lots were partly built on the alley. He thereafter bought the house and lot, Atchison agreeing to have the sheds removed from the alley. Such was the

situation relative to the sheds and the alley when appellant acquired his title. Something more than a year after an effort was made by one Bradley, holder of a trust note on lots 33 and 34, to have the sheds removed. On June 18, 1901, the Secretary of the District replied that the alley was not a public alley. Appellant also in 1901 asked the Commissioners to open the alley and received a similar answer. On April 7, 1903, the Commissioners confirmed the acceptance of the 5-foot alley and ordered the removal of all obstructions. Thereafter the appellant, refusing or neglecting to remove the shed, he was arrested and tried in the Police Court upon the charge of obstructing the alley, but he was acquitted on the ground that the alley was not a public alley.

The testimony of the man who built the stable shows that the measurements were made by Atchison, who was down there off and on while the stable and sheds were being erected. Appellee testified that he did not know that the stable covered any part of the alleged alley, and that Atchison told him that if the owner of the adjoining property gave 5 feet there would be a 10-foot alley, otherwise there would be no alley; also that it made no difference to him whether there was an alley because he had the corner house.

On February 3, 1905, prior to the commencement of this suit, Caldwell, who subdivided the original lot 14, conveyed to appellee all his right, title, and interest to said lot 14 to the appellee. These are substantially the facts material to the case.

The relief prayed by the bill is that defendant be perpetually enjoined from obstructing any part of the alleged alley, or that he be required to remove all obstructions in the alley at the rear of lot 32 owned by him.

The question presented by the appeal and which we are called upon to determine is whether the court below erred in dismissing the bill of complaint.

It is strenuously urged that the recording of the subdivision of original lot 14 in the office of the surveyor of the District of Columbia on July 7, 1897, by the then owner Caldwell, was such a dedication of the strip 5 feet wide at the rear of the lots 32, 33, and 34 that it thereby became a public way, the title to which thereby passed from Caldwell and became vested in the United States.

We have seen that an act of Congress governs the creation of public ways in the District of Columbia; that the Commissioners of the District are vested by said act with the power to regulate the platting and subdivision of lands in the District, and to that end may make general orders; and that the provisions of said act must be complied with in order that streets, avenues, or alleys designated on recorded plats of lands become public ways. It further appears that in conformity with said act the Commissioners of the District on May 20, 1895, had adopted an order requiring public alleys to be not less than ten feet in width. Such order was in force when Caldwell recorded his subdivision of lot No. 14, and no modification of or special exception to the order is shown to have been made which would authorize the acceptance of the proposed alley, which concededly was only five

feet in width. We are of the opinion that in the absence thereof the proposed alley did not become a public way, that the public acquired no right of way over it, and that no title vested in the United States.

It also appears that efforts were made in 1899, 1900, and 1901 to induce the United States to accept title to the strip, but that the Commissioners of the District as often declared that the alley was not a public alley, and that they could not treat it as one.

In the case at bar it clearly appears that there was no complete statutory dedication. To make such a dedication requires not alone that the street or alley be given, but that it be accepted. The reason for this is self-evident. The acceptance of a public street or alley imposes burdens on the District. "The law is well settled that, to constitute a public street or highway by dedication, there must not only be an absolute dedication—a setting apart and a surrender to the public use of the land by the proprietors—but there must be an acceptance and a formal opening thereof by the proper authorities, or a user which is equivalent to such acceptance and opening." *Mahler v. Brumder*, 92 Wis., 477, 482.

Here we find neither acceptance nor user. The proposed alley was a mere *cul de sac* of no use to the public, and by the public never used. In fact, there was no user of any kind. Before that occurred it was built upon. The land adjacent to and abutting upon it was vacant land.

Furthermore, Caldwell, who had recorded the plat, testified that in laying out the tract with the proposed alley he had proceeded with the idea that the owner of the adjoining property would also set off 5 feet so as to make an alley 10 feet wide. This seems reasonable, but whether or not there was such intention is immaterial, so far as it affects the question whether "it became a public way," for the general order as to width of public alleys, passed in accordance with the act, were not complied with. There was no valid statutory dedication, for an essential provision of the statute was not complied with, and without this there could be no valid statutory dedication. *Amer. and Eng. Ency. of Law*, vol. 9, p. 35.

Nor do we think that appellant's contention that the admission to record of the plat by the Commissioners amounted to an acceptance of the alley is well founded, and our attention has not been called to any authority sustaining the proposition.

It is further contended that the 5 feet wide strip shown on the plat at the rear of lots 32, 33, and 34 is a private way. There might be some force in the contention were the facts other than as disclosed by the record. Caldwell conveyed the three lots to Atchison, who built three houses upon the lots. Up to that time there had been no occasion to use the strip as a private way.

Atchison built three sheds at the rear of the three houses covering the strip, or a part of it, and the building of the shed on lot 32 was the inducement held out by him which led Carver to buy the place. It appears, therefore, that at no time did anyone use the strip as a private way. When the appellant bought his lot the shed was in use by Carver, and he knew that it was built on the strip in controversy. After an

inspection of the property, and with full knowledge that the alleged alley was built over, and that there was no way, public or private, over it, he bought his lot. And this brings us to the second question whether the appellant, or Atchison from whom he bought, has or had any right to compel the removal of the shed.

Atchison bought the tract from Caldwell and built upon it at the same time the three houses and sheds. The space platted as an alley only extended back of the three lots, and the space not being a public alley, no person other than the owner of the three lots had any vested rights in, or over the strip at their rear. In no event at the time when Atchison built the houses and sheds had anyone any right to object to his putting any part of them upon the strip, save possibly Caldwell. He never sought to compel Atchison to leave the strip unencumbered. On the contrary, at a later date he conveyed any right, title, or interest he had remaining to him in the strip to the appellee. This was before the commencement of the suit. The fact, however, is of no importance in determining this present controversy. We only refer to this deed to show that there is no outstanding interest in, or title to, the strip remaining in Caldwell. It belongs either to the appellee, or to the owners of the three lots in front of it.

Surely Atchison is estopped from successfully insisting that the appellee should remove the shed in view of the fact that he located its position and built it, and by doing so induced Carver to purchase the property. At the most the strip was a private way and had never been used at the time when he built upon it.

Next we are to consider whether appellant is in any better position than is Atchison, his grantor.

That what Atchison could not do, his grantee Watson, appellant, can not do, is settled in this jurisdiction by the case of *Frizzel v. Murphy*, 19 App. D. C., 440; 30 Wash. Law Rep., 203. Chief Justice Alvey delivering the opinion of court in the case, said:

"But waiving the question of the right to maintain the action, the more important question is as to the extent and effect, of the alleged implied grant of an easement for the benefit of the house on lot No. 5, as against lot No. 6. Both lots are in the same subdivision and adjoining each other, and they belonged to the same owner, and the houses on both lots were built by him while he was owner, and the lot 5, with the building and all improvements, easements, right and privileges thereto appertaining, were first conveyed and disposed of by the owner of both lots. By this severance, what was at that time a mere quasi easement for the benefit of the building on lot No. 5, became a fixed and permanent easement by implied grant, and the owner thus conveying the one lot as the quasi dominant tenement could not derogate from his grant or deny to his grantee, or those claiming under the latter, the use and benefit of what was at the time of severance of the unity of ownership an open and apparent easement reasonably necessary to the enjoyment of the part granted. The principle seems to be well settled, both upon principle and authority, that where the owner of both the quasi-dominant

and the quasi-servient tenements conveys the former, retaining the latter, all such continuous and apparent quasi-easements as are reasonably necessary to the enjoyment of the property pass to the grantee, giving rise to an easement by implied grant."

And again: "The same principle is clearly stated in the case of *Wheeldon v. Burrows*, 12 Oh. Div., 31, where the previous cases upon the subject were examined, and the distinction between an implied grant and an implied reservation clearly drawn. In that case it was said, that where upon the grant by the owner of a tenement of a part of that tenement as it is then used and enjoyed, there will pass to the grantee all those continuous and apparent easements (by which, of course, is meant quasi-easements), or, in other words, all those easements which are necessary to the reasonable enjoyment of the property granted, and which have been and are at the time of the grant used by the owner of the entirety for the benefit of the part granted. But if the grantor intends to reserve any right over the part or tenement granted, it is his duty to reserve it expressly in the grant."

Conceding that Caldwell intended or attempted to dedicate the strip for use in connection with the lots, we are of the opinion that it was not such a complete dedication, no one having used it or acquired rights to use it at the time when it was built upon, that it could not be withdrawn by the one so attempting to dedicate it, or by the one succeeding to his interests. However this may be, appellant has no standing to question the withdrawal of the strip from its intended dedication.

The estoppel against Atchison runs against the appellant. He saw the shed on appellee's lot; was told that it extended over the alleged alley; and made no effort to learn from appellee what rights he claimed. He relied, according to his own story, upon Atchison's promise to remove the shed from a place he had sold to another, and to which he was as much a stranger at that time as was any other of the general public.

It appearing that the alley never was a public alley; that before anyone acquired rights in, to, or over it as a private alley, or as an easement, it was closed; and that appellee acquired his title long before appellant acquired his—both acquiring from a common owner—it is not seen that appellant upon any theory can maintain his suit.

The court below committed no error in dismissing the bill of complaint, and therefore its decree must be and is affirmed with costs.

Affirmed.

An action for the death of a minor child is held, in *Swift & Co. v. Johnson* (C. O. A. 8th C.), 1 L. R. A. (N. S.), 1161, to be for the sole benefit of the father, although he has deserted his family to whose support the deceased was, at the time of his death, contributing.

Property conveyed to a railroad company for a right of way, by a general warranty deed, is held, in *Abercrombie v. Simmons* (Kan.), 1 L. R. A. (N. S.), 806, to revert to the adjoining owner upon the abandonment of its use for that purpose.

## Court of Appeals of the District of Columbia.

STILSON HUTCHINS, APPELLANT,

v.

JOHN W. LANGLEY, RECEIVER.

BILLS AND NOTES; BONA FIDE HOLDER; NOTICE OF DEFENSE; FRAUD.

1. Neither suspicious circumstances nor gross negligence will defeat the title of a holder in due course of a negotiable note; but such a result can be produced only by bad faith, which implies guilty knowledge or wilful ignorance; and the burden of proof is on the party assailing the title.
2. That a party taking before maturity a promissory note indorsed in blank by the holder as collateral security for the note of such holder, had notice that the holder was engaged in the sale of mining stocks, is not sufficient to affect him with any defenses existing as between the maker and payee of such note.
3. Where a promissory note complete and regular on its face is, before maturity, transferred by the holder thereof as collateral security for a note made by him, the title of the transferee, he being a holder in due course, can not be defeated by showing an oral agreement between the maker and payee of such note by the terms of which it was to be returned in the event certain stocks, for the purchase of which it was given, should decline in value, and was to be used as collateral elsewhere than in Washington.
4. The evidence in the present case examined and held insufficient to show that the note transferred as collateral had been fraudulently obtained.

No. 1611. Decided April 8, 1906.

APPEAL by defendant from a judgment of the Supreme Court of the United States, at Law, No. 45,681, entered upon a verdict for plaintiff in an action on a promissory note. Affirmed.

*Messrs. Brandenburg & Brandenburg* for the appellee.

*Mr. D. W. Baker, Mr. W. J. Lambert and Mr. F. J. Hogan* for the appellant.

Mr. Justice MCCOMAS delivered the opinion of the Court:

John W. Langley, receiver, the appellee, brought suit in the court below against Stilson Hutchins, the appellant, for the sum of \$3,800 with interest, the amount of a promissory note executed by said Hutchins, dated March 3, 1902, payable to the order of Anderson T. Herd, 90 days after date, and by said Herd endorsed before maturity.

Upon the trial the court instructed the jury to return a verdict for the appellee, and from the judgment thereon this appeal was taken. At the trial it appeared that William R. Merriam, in behalf of his wife, in March, 1902, purchased of Anderson T. Herd, through John W. Langley, 1,000 shares of stock of the Consolidated Quick-silver Mining Company of the par value of \$10 for \$9,000, which Merriam paid in cash. At the time Herd agreed to repurchase the stock within 90 days for the purchase price from Merriam if he desired to return the stock. About one month later Merriam decided to return the stock and for this purpose sent John W. Langley, the appellee, to New York. Herd accepted the stock returned, but instead of money gave Langley his own promissory note for \$9,000, dated April 7, 1902, endorsed by Dove and Beekman, payable 10 days after date, and as collateral security for the payment thereof, also the 1,000 shares of stock returned by

Merriam, two notes of \$2,500 each, made by M. C. Butler, with 500 shares of the same stock attached, and also the promissory note of Stilson Hutchins for \$3,800, sued for in this action, endorsed in blank by said Herd and by Dove and Beekman.

At the time W. R. Merriam purchased said shares of stock, Herd sold some shares to Langley, to William H. Merriam, and David J. Peffers, upon the same conditions as in the sale to William R. Merriam for his wife. After Langley delivered to William R. Merriam Herd's note for \$9,000 and the collateral, including the note in suit, William H. Merriam, Peffers, and Langley, severally, sued Herd to recover the value of the stock each had purchased from Herd. Writs of attachment were issued against William R. Merriam, to which he made answer that he held the Herd note mentioned and the securities named as collateral. Mrs. Laura E. Merriam, the wife of William R. Merriam, filed a bill in equity against Herd, Langley, William R. Merriam, William H. Merriam, and David J. Peffers, the attaching creditors. In that suit Langley was appointed receiver of the notes and securities held by William R. Merriam for his wife, and was authorized to bring suit to recover thereon.

As receiver, Langley, as stated, brought suit against Hutchins to recover the amount of this \$3,800 note. This note had been obtained by Langley for Merriam or his wife before its maturity in the manner and for the consideration before stated.

The appellant testified that he gave the note sued on, for 400 shares of the same mining stock purchased upon Herd's representation that the stock had never sold below par, and that should appellant's note be used as collateral it would be so used in a New York bank and would not be negotiated in Washington, and that should the stock sell below \$9 per share, Herd would return to Hutchins his note upon his demand for it; that within a month after the date of the note the price of the stock greatly declined and Hutchins demanded the return of said note, but Herd made excuse that the note had been tied up in some proceedings against the company; that it was about the time of Hutchins' demand for the return of the note that Herd turned it over to Langley for Merriam. It is true that Herd used the note as collateral security, but in such fashion that it was negotiated not in New York but in Washington.

The appellant claimed that Herd's statement concerning the value of the stock was false and fraudulent, and that when Herd gave his (Hutchins') note to Langley for Merriam, Herd violated his promise to Hutchins, that the note would not be returned to Washington, and therefore that the note was fraudulently obtained and negotiated.

The appellant called William R. Merriam who testified that he had no notice of any infirmities in the making or the negotiating of the note, nor of any defect in the title of Herd; that Herd had informed Merriam that he (Herd) had sold stock to the appellant and had received his note therefor, but that he (Merriam) had no information respecting any agreement between Herd and Hutchins relating to the giving of the note or of the conditions upon which Hutchins pur-

chased the stock, except that Herd told him he had such note, "but Herd did not particularly say anything to him about the circumstances of the sale of the stock to appellant." The evidence fails to show that the endorsement of the note by Herd as collateral security for his own note to William R. Merriam was collusive or fraudulent, and fails to bring home to Merriam any knowledge that would vitiate in his hands this promissory note endorsed to him as a bona fide holder before maturity.

Defenses available against the holder of a note are available against a receiver, such as the appellee here, to whom the note is transferred under a decree of the court. *Daniel Neg.* 1st (5 Ed.), 781.

In this transaction Langley was the agent of Merriam. For this reason and for the sake of clearness hereafter, we speak not of Langley, the receiver, but of William R. Merriam, the holder of the note.

The note is complete and regular upon its face. It is undisputed that Merriam became a holder, in due course, of the appellant's note, and became the holder of it before it was overdue; that he took it in good faith and for value is the fair conclusion from all the testimony. Herd endorsed the note in blank and delivered it to Langley as collateral security for Herd's note for \$9,000 given to Merriam at the same time.

It is urged that Merriam had such knowledge of Herd's sale of mining stock as to put him upon inquiry before taking this note. The court has said: "The position of the holder of negotiable paper for value is a strong one, and he can not be displaced by mere circumstances of suspicion growing out of the unpopular business or even the ill-reputation of his assignor." *Brewer v. Slater*, 18 App. D. C., 56; 29 Wash. Law Rep. 259.

Suspicious circumstances alone do not impute notice to such a holder before maturity. "One who purchases such paper from another, who is apparently the owner, giving a consideration for it, obtains a good title, though he may know facts and circumstances that may cause him to suspect, or would cause one of ordinary prudence to suspect, that the person from whom he obtained it had no interest in it or authority to use it for his own benefit, and though by ordinary diligence he could have ascertained these facts." *Goodman v. Simonds*, 20 How., 343. "He can lose his right only by actual notice or bad faith." *Swift v. Smith*, 102 U. S., 442, 444.

It was attempted to show that the appellee was a holder in bad faith by the alleged suspicious circumstances which we have stated. As this court has said, suspicion is not proof. The note is complete and regular upon its face. All of the circumstances thought to be suspicious are outside of the instrument itself, and the Supreme Court say: "But it is a very different thing when it is proposed to impeach the title of a holder for value by proof of any facts and circumstances outside of the instrument itself. He is then to be affected, if at all, by what has occurred between other parties, and he may well claim an exemption from any consequences flowing from their acts, unless it be first shown that he had knowledge of such facts and circumstances at the time the transfer was made." *Brown v. Spofford*, 95 U. S., 474, 483.

Neither suspicion nor gross negligence can defeat the title of the appellee to this note, nor is the burden of proof upon him. "The law is well settled that the party who takes negotiable paper before due for a valuable consideration without knowledge of any defect of title, in good faith, can hold it against all the world. A suspicion that there is a defect of title in the holder, or a knowledge of circumstances that might excite such suspicion in the mind of a cautious person, or even gross negligence at the time, will not defeat the title of the purchaser. This result can be produced only by bad faith, which implies guilty knowledge or wilful ignorance, and the burden of proof lies on the assailant of the title." *Hotchkiss v. National Banks*, 88 U. S., 354, 359.

The appellant relies upon the oral agreement of Herd to return the note and to use it as collateral elsewhere than in Washington. We have said that the evidence falls short of showing that the note was obtained by fraud or that it was negotiated fraudulently.

"In the absence of fraud, accident, or mistake the rule is the same in equity as at law, that parol evidence of an oral agreement alleged to have been made at the time of drawing, making, or endorsing a bill or note, can not be permitted to vary, qualify, or contradict, or to add to or subtract from the absolute terms of the written contract. *Forsyth v. Kimball*, 91 U. S., 291." *Brown v. Spofford*, supra, 474, 481.

This case differs from the class of cases to which *Griffith v. Shipley*, 74 Md. 602, and *Totten v. Bucy*, 57 Md., 448, belong. In the one case the fraudulent sale of "hulless oats" and in the other of worthless washing machines for which a note was given, were accompanied by circumstances which shifted the burden of proof to the holder of the note.

We have said that while there are suspicious circumstances in this case, the evidence is not legally sufficient to establish the charge that this note was obtained by fraud. It appears that Herd represented to Hutchins that the Quicksilver Mining Stock had never sold below par. We find nothing in the record proving this statement untrue. It is true that immediately after the note was given the stock fell rapidly. Herd promised Hutchins that a dividend would soon be declared and others would follow and shortly thereafter a dividend was declared. Herd promised under certain conditions to return Hutchins' note and thereafter Herd failed to keep his promise. This is not legally sufficient to prove that the note was fraudulently obtained. When the appellant gave the note, Herd promised that it should be used only as collateral security in a New York bank. This promise may or may not have been made in good faith. The note was used as collateral for Herd's note given to Merriam who brought it back to Washington and negotiated it here. There is not enough in this transaction to support the charge that this note was fraudulently negotiated. Herd failed to deliver the stock to the appellant and it appears the stock has not been delivered, and it also appears that when the stock began to fall so rapidly the appellant naturally sought more eagerly for the return of his note than for the delivery of the stock. In each of the other in-

stances Herd appears to have delivered the stock he sold with celerity, while he was slow to return the cash or notes given therefor.

In cases similar to the case before us, this court affirmed the action of the trial court in directing a verdict for the plaintiffs. See *Green v. Stewart*, 23 App. D. C., 570; 32 Wash. Law Rep., 409, and also *Brown v. Peterson*, 25 App. D. C., 359; 33 Wash. Law Rep., 259.

The learned court below did not err in directing the jury to return a verdict for the plaintiff.

2. Since we decide that the court properly directed a verdict for the plaintiff, the minor exceptions to the refusal of the court to admit certain testimony become unimportant. The reasons which induced Merriam to demand from Herd a return of the note the former had given the latter for stock, or the reason why Merriam had not turned over the note in suit to his wife, do not appear to affect the issue here. We fail to see how testimony upon these points was relevant, and it appears that at the trial below appellants counsel omitted to state the grounds of exception to the court's rulings. This, of course, counsel ought to do. The other exceptions to the testimony offered and refused by the learned court below, are so unimportant that we need not discuss them.

The judgment of the court below must be affirmed with costs, and it is so ordered.  
Affirmed.

Refusal to pay money admitted to be due, except upon receiving a certain kind of receipt, is held, in *Earle v. Berry* (R. I.), 1 L. R. A. (N. S.), 867, not to constitute such duress as to render the receipt void.

#### RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

#### Legal Notices.

##### FIRST INSERTION.

Thos. Walker, Attorney

In the Supreme Court of the District of Columbia.  
In re Estate of John Johnson, Deceased.

Admr. No. 12,782.

Upon consideration of the report of Walter G. Bradley, executor, filed herein, it is, this 31st day of July, A. D. 1906, adjudged, ordered, and decreed by the court that the sale thereby reported of the following-described real estate, situate in the county of Washington, in the District of Columbia, and known as the west half ( $\frac{1}{2}$ ) of the east half ( $\frac{1}{2}$ ) of lot thirty-two (32) in block eighteen of the Howard University subdivision of the farm of John A. Smith, known as "Emingham Place," the same fronting twelve and one-half ( $12\frac{1}{2}$ ) feet on V street N. W. (formerly Wilson street N. W.) by the depth of one hundred and fifty (150) feet, being premises No. 845 V (formerly Wilson) street N. W., to Furman J. Shadd, for five hundred and fifty (\$550.00) dollars, be ratified and confirmed, unless cause to the contrary be shown on or before the 3d day of September, A. D. 1906. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said last mentioned date.

[Seal] By the Court: ASHLEY M. GOULD, Justice.  
A true copy. Attest: James Tanner, Register of Wills.

31-St

#### Legal Notices.

Frederick S. Tyler, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Benjamin Franklin Whiteside, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 27th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of July, 1906. EDWARD W. WHITESIDE, 1921 Pa. ave. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,830. Administration. [Seal.] 31-St

Lyon & Lyon, Attorneys

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Max Goldsmith, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 27th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 30th day of July, 1906. ELLEN GOLDSMITH, CHAS. A. GOLDSMITH, 1910 Calver st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,834. Admn. [Seal.] 31-St

Alexander H. Bell, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Chas. E. Roberts, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of July, 1906. MARY E. ROBERTS, 630 7th st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,808. Administration. [Seal.] 31-St

J. J. Darlington, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of V. Baldwin Johnson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 31st day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of July, 1906. MARGARITA JOHNSON, 1201 Q. st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,841. Administration. [Seal.] 31-St

[Filed July 30, 1906. J. R. Young, Clerk.]

Robert E. Mattingly, Attorney

In the Supreme Court of the District of Columbia,  
Holding Equity Court.

Mildred M. Posey, Complainant, v. Charles P. Posey,  
Defendant.

Equity, No. 23,167.

The object of this suit is to require the defendant to provide suitable maintenance for the support of the complainant, his wife, and on motion of complainant, by Robert E. Mattingly, her solicitor, it is, this 30th day of July, A. D. 1906, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order. Provided this order be published in The Washington Times, The Washington Post, and in The Washington Law Reporter once a week for three successive

[Seal] weeks. By the Court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 31-St

**Legal Notices.**

**Richard Curtin, C. W. Darr, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Mary A. Lyons, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 31st day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of July, 1906. MARGARET CURTIN, 856 Mass. ave. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,798. Administration. [Seal.] 31-St

**Raymond B. Dickey, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Thomas A. Mayes, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 27th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 27th day of July, 1906. WILLIAM W. GORDON, Stanhope Apt., New Jersey ave.; JACOB W. COLLINS, 63 Bryant ave. N. W.; MORSE O. MAYES, 1016 7th st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,822. Administration. [Seal.] 31-St

**William Stone Abert, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Walter T. Wardell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of August, 1906. WILLIAM STONE ABERT, 408 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,725. Administration. [Seal.] 31-St

**C. W. Darr, R. Curtin, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Annie Collins, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of July, 1906. THOMAS J. SAFFELL, 108 Seaton Place N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,882. Administration. [Seal.] 31-St

**In the Supreme Court of the District of Columbia.**  
**Robert A. Phillips v. William B. Osborne.**

Equity, No. 26,063.  
 This cause coming on to be heard upon the report of sale by R. Henry Phillips, trustee, filed in this cause on the 23d day of July, 1906, and the same having been duly considered by the court, it is, this 1st day of August, 1906, ordered that the sale mentioned in said trustee's report be, and the same is hereby, confirmed and ratified unless cause shall be shown to the contrary on or before the 4th day of September, 1906, at 10 o'clock A. M. Provided a copy of this order be published once a week for three weeks before said day in The Washington Law Reporter and The Washington Times.  
 [Seal] JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 31-St

**Legal Notices.**

**Irving Williamson, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Elizabeth Behrens Kenny, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Tuesday, the 28th day of August, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 27th day of July, 1906. JOHN W. PILLING, Executor, by Irving Williamson, Attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,832. Administration. [Seal.] 31-St

**SECOND INSERTION.**

**Geo. E. Fleming, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Jacob F. Raub, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 29th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of July, 1906. LUTHER F. SPIER, 722 North Carolina ave. S. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,686. Administration. [Seal.] 30-St

**Henry S. Matthews, Solicitor**

**In the Supreme Court of the District of Columbia.**  
**William King et al., Complainants, v. Mary Elizabeth Oxley, Defendant.** In Equity, No. 28,054. Doc. No. —.  
 Upon consideration of the report of Henry S. Matthews, trustee, of the sale made by him of parts of lots numbered 63 and 64 in square numbered 1180 in that part of the city of Washington and District of Columbia formerly known as "Georgetown," beginning for the same at a point on the east line of 31st street northwest, distant 39 25-100 feet south from the intersection of the dividing line between said lots 63 and 64 with the east line of 31st street, and running thence north with said east line of said street, for a front 56 33-100 feet, and extending back east and of the width of said front, to the east line of a private alley in the rear of said premises, subject, however, to such rights as owners of property abutting on said alley may have over said alley, for the sum of twenty-two hundred and fifty dollars. It is, by the court, this 28th day of July, A. D. 1906, ordered, that said sale be, and the same is hereby, approved, ratified and confirmed, unless cause to the contrary be shown within thirty days from the date hereof. Provided a copy of this order be published for three successive weeks in the Washington Law Reporter within the said thirty days. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 30-St

**T. Percy Myers, Attorney**

**In the Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Frank G. Hanvey, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Tuesday, the 28th day of August, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 23d day of July, 1906. WALTER H. ACKER, Administrator, by T. Percy Myers, Attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,008. Admn. [Seal.] 30-St



**Legal Notices.**

**Maurice Kelly, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Daniel Paul McCartney, Deceased.**  
 No. 11,376. Administration Docket 80.

Application having been made herein for probate of the last will and testament and codicil thereto of said deceased, and for letters testamentary on said estate, by Mary Virginia McCartney and William Nelson Cromwell, the executors named in said will and codicil, it is ordered this 20th day of July, A. D. 1906, that Mary J. McCartney, otherwise known as Mary McCartney, James Garvey, Thomas Garvey, Mary W. McCaffery, Harry Francis Garvey, William Edward Garvey, Florence Rebecca Garvey, and Ethel Loretta Garvey, and any and all the next of kin and heirs at law of Daniel Paul McCartney, and all others concerned, appear in said court on Monday, the 27th day of August, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 80-81

**James F. Hood, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary E. Hood, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 18th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 24th day of July, 1906. **JAMES F. HOOD, N. W. cor. 15th st., Pa. ave. N. W.; EVERETT J. DALLAS, The Baltimore, Wash., D. C.** Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,667. Administration. [Seal.] 80-81

**L. Cabell Williamson, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Sarah Janette Penicks, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of July, 1906. **L. CABELL WILLIAMSON, 458 La. Ave.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 13,799. Administration. [Seal.] 80-81

**John Paul Earnest, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Champe B. Thornton et al. v. Jennie T. Powers et al.**  
 Equity, No. 21,956.

Upon consideration of the report of John P. Earnest, trustee, filed herein, it is, this 24th day of July, A. D. 1906, ordered that said trustee be authorized to accept the offer of Robert M. Gray to purchase, at private sale, for \$2,202.15, lots 4, 5, 6, and 7, in block 3, of the lots decreed to be sold in the above-entitled cause; and, further, that said sale of said lots be ratified and confirmed, unless cause to the contrary be shown on or before the 25th day of August, A. D. 1906. Provided a copy of this order be published in The Washington Law Reporter, The Washington Post, and The Evening Star, once a week for three successive weeks before said date. **ASHLEY M. GOULD, Justice.** A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 80-81

[Seal]

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W.

**Legal Notices.**

**C. W. Stetson, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary B. Shields, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of July, 1906. **JANE S. ELLIOTT, 2153 Florida Ave.** Attest: **WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 13,744. Administration. [Seal.] 80-81

**W. H. Linkins, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**

**Elizabeth T. Wilson, Complainant, v. William Waugh et al., Defendants.** Equity, No. 26,845.

The object of this suit is to declare the title of the complainant to the south twenty-six (26) feet one (1) inch front by the full depth of original lot six (6) in square one hundred and twenty-two (122) to be good of record in her, in fee simple, by reason of adverse possession. On motion of complainant by her solicitor, Wm. H. Linkins, it is, by the court this 25th day of July, 1906, ordered that the defendants, William Waugh, Eliza Waugh, and the unknown heirs of A. Fisher, and Ezra Varden, if the said named parties be living, and if dead, their or either of their unknown heirs, devisees, grantees, and alienees, both immediate and mediate, and the unknown heirs of such devisees, grantees, and alienees, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided this order be published once a week for three successive weeks in The Washington Law Reporter, The Washington Post and The Washington Times, before said return day, the first publications to be on the twenty-seventh day of July, 1906, and does not read as originally passed. By [Seal] the Court: **ASHLEY M. GOULD, Justice.** A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 80-41

**John A. Butler, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Rose E. Riley v. A. Ada Burke et al.**  
 Equity, No. 26,174.

Upon consideration of the report of John A. Butler, trustee, filed herein, stating that he has sold part of lot 15, square 534, and described in the bill of complaint filed herein, to Wiegand and Wilson, for the sum of twenty-seven hundred and five (\$2,705) dollars, it is, this 24th day of July, A. D. 1906, adjudged, ordered, and decreed that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 24th day of August, A. D. 1906. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks prior [Seal] to said return day. **ASHLEY M. GOULD.** True copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 80-51

**James Rudolph Garfield, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Sarah R. Colgate, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 23d day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 25th day of July, 1906. **JAMES RUDOLPH GARFIELD, STEPHEN G. REMINGTON.** Attest: **WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 13,417. Admn. [Seal.] 80-81

Justice blanks of every description for sale at this office.

**Legal Notices.****THIRD INSERTION.****George C. Gertman, Solicitor****In the Supreme Court of the District of Columbia,  
Holding an Equity Court.****Mary V. Morris, Complainant, v. Maria L. Taff et al.,  
Defendants. Equity No. 26,025.**

Upon consideration of the report of the trustees filed herein reporting their conduct in the premises, and the offer of Maria L. Taff, Edward C. Gross, Blanche M. Gross, Robert L. Gross, and Annie E. Chaffee, defendants herein, to purchase the property involved in this suit at and for the sum of nineteen hundred dollars in cash, it is, this 19th day of July, A. D. 1906, by the court ordered that said trustees be, and they hereby are, authorized to accept the aforesaid offer and complete the sale accordingly unless cause to the contrary be shown on or before the 8th day of August, A. D. 1906. Provided a copy of this order be published once a week for three successive weeks prior to said date in The

[Seal] Washington Law Reporter. **ASHLEY M. GOULD, Justice.** A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 29-3t

**John B. Larnar, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Edwin S. Houston, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 6th day of August, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 10th day of July, 1906. **THE WASHINGTON LOAN AND TRUST COMPANY,** by Andrew Parker, Treasurer; **John B. Larnar, Attorney.** Attest: **JAMES TANNER,** Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,067. Administration. [Seal.] 29-3t

**John B. Larnar, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Susannah A. Chapman, Deceased.  
No. 18,690. Administration Docket —**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by the Washington Loan and Trust Company, the executor named therein, it is ordered this 16th day of July, A. D. 1906, that the unknown heirs at law and next of kin of said deceased, and all others concerned, appear in said court on Monday, the 30th day of August, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less

[Seal] than thirty days before said return day. **WRIGHT, Justice.** Attest: **James Tanner,** Register of Wills for the District of Columbia, Clerk of the Probate Court. 29-3t

**Leon Tobriner, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Henry Klinge, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the sixth (6) day of August, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 17th day of July, 1906. **CATHERINE KLINGE,** by Leon Tobriner, Attorney. Attest: **JAMES TANNER,** Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,061. Administration. [Seal.] 29-3t

**Legal Notices.****Ralston & Siddons, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Charles E. Rowzee, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of July, 1906. **EDWIN C. GRAHAM,** 1830 N. Y. ave. Attest: **JAMES TANNER,** Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,761. Administration. [Seal.] 29-3t

**Nelson Wilson, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Clara O. Richards, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of July, 1906. **LOUISA C. RICHARDS,** 1217 10th st. N. W. Attest: **JAMES TANNER,** Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,801. Administration. [Seal.] 29-3t

**In the Supreme Court of the District of Columbia.****Jennie Gray v. Juliette Moore McKee et al.**

Upon consideration of the report of L. Cabell Williamson, trustee, filed herein, stating that he has sold lot 77, in square 510, and described in the bill of complaint filed herein, to Mrs. Carrie York for the sum of nine hundred and ten dollars (\$910.00), it is by the court, this 13th day of July, A. D. 1906, adjudged, ordered, and decreed that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 13th day of August, A. D. 1906. Provided a copy of this order be published

in The Washington Law Reporter once a week for three successive weeks prior to said return day. **WRIGHT, Justice.** A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. Equity No. 24,850. 29-3t

**Hamilton, Colbert & Hamilton, Solicitors****In the Supreme Court of the District of Columbia.  
Adrian E. Cox, v. Burton Clark et al.****Equity No. 26,285.**

The object of this suit is to declare the title of the complainant to the real estate situated in the city of Washington, District of Columbia, known as lots numbered twenty-two (22) and twenty-three (23) according to the subdivision made by Alfred Richards of lots in square numbered seven hundred and three (703) as said subdivision appears of record in the office of the surveyor of the District of Columbia, in book 20 at page 154, to be good in fee simple by reason of adverse possession, and to declare the title of complainant to be good in him of record and to perpetually enjoin the defendants from asserting any title to said real estate. On motion of the complainants, by his solicitors, Hamilton, Colbert & Hamilton, it is, by the court, this 16th day of July, A. D. 1906, ordered that the defendants, Burton Clark, Peter Campbell, William Clagett, John Mason, otherwise known as John Watson, Charles Lyons, and the unknown heirs, allenees, and devisees of said Clark, Campbell, Clagett, Mason, otherwise called Watson, and Lyons, cause their appearance to be entered herein on or before the first rule day occurring after the fortieth day exclusive of Sundays and legal holidays after the date of the first publication of this order, otherwise this cause will be proceeded with as in case of default. The court is satisfied upon good cause shown, as appears by the affidavit filed herein, that it is not necessary that this order should be published at least twice a month during the period of not less than three months. This order shall be published at least once a week for four successive weeks before said return day, provided that said order shall be published twice a month in the month of July, 1906, and twice a month in the month of August, 1906. This order shall be published in The Washington Law Reporter, the court not deeming it necessary that the same should be published in any other paper, and no other papers having been selected by the

[Seal] parties. **WRIGHT, Justice.** A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. July 20-27; aug 3-10

**Legal Notices.****Sheehy & Sheehy, Attorneys**

**In the Supreme Court of the District of Columbia,  
Holding a Special Term as a Probate Court.  
In re Estate of Nora Flannery, Deceased.**

Administration, No. 12,559.

Michael A. Lynch, executor of the last will and testament of Nora Flannery, deceased, having reported that he has sold at public auction to Lewis Holmes for the sum of twenty-five hundred and twenty-five (2525) dollars, part of lot numbered four (4) in square numbered five hundred and sixty-seven (567), beginning for the said part of said lot at a point in the line of north "F" street one hundred and thirty-six (136) feet east of the southwest corner of said square and running thence north seventy-nine (79) feet; thence west fourteen (14) feet and thence south seventy-nine (79) feet to the place of beginning, together with the improvements, being premises No. 119 "F" street northwest; and also that he has sold to John T. Kenaley, for the sum of twenty-four hundred and fifty (2450) dollars, lot marked and lettered "N" in the recorded subdivision of certain original lots in square numbered five hundred and twenty-three (523), made by U. S. Ward, according to the plat of said subdivision as the same appears of record in the office of the surveyor of the District of Columbia, in book B, at page 95, together with the improvements, being premises No. 1234 New Jersey avenue northwest. It is now, this 5th day of July, A. D. 1906, by the court, upon consideration of said report, ordered that said sales be ratified and confirmed unless cause to the contrary be shown on or before the 6th day of August, A. D. 1906. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said last named date. WRIGHT, Justice. A true copy, Attest: James Tanner, Register of Wills. 28-31

**Geo. Francis Williams, Attorney**

**Supreme Court of the District of Columbia,  
Holding Probate Court.**

**Estate of Robert M. Lockwood, Deceased.**

No. 13,788. Administration Docket 35.

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by Fannie H. Lockwood (widow), it is ordered this 19th day of July, A. D. 1906, that Herbert J. Lockwood, and all others concerned, appear in said court on Monday, the 20th day of August, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY

[Seal] M. GOULD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 28-31

**Levi H. David, Attorney**

**Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Matilda Oger, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of July, 1906. STEPHEN H. HINES, 1715 14th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,813. Administration. [Seal.] 28-31

**Wm. A. McKenney, Attorney.**

**Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Robert Fortner, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of July, 1906. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,756. Administration. [Seal] 28-31

**Legal Notices.****FOURTH INSERTION.****S. McNamara and R. S. Huldekoper, Solicitors**

**In the Supreme Court of the District of Columbia,  
Holding an Equity Court.**

**Katherine S. Means, Guardian, et al., Complainants,  
v. William A. Rector et al., Defendants. In Equity,  
25,359. No. Doc. 58.**

Upon consideration of the report of the trustees filed herein, on the 11th day of July, 1906, reporting their conduct in the premises and the offer of George D. Farr to purchase the property involved herein at and for the sum of forty thousand dollars, according to the terms set out in the said report, it is, this 11th day of July, 1906, ordered that the said trustees be, and they hereby are, authorized and directed to accept the said offer of the said George D. Farr, and to complete the sale according to the terms of the contract set out herein in this cause, unless cause to the contrary be shown on or before the 13th day of August, 1906. Provided a copy of this order be published once a week for four successive weeks prior to said date in The Washington Law Reporter. By the Court: WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 28-41

**FIFTH INSERTION.****Edwin S. Bailey, Solicitor**

**In the Supreme Court of the District of Columbia.**

**Edwin W. Spalding, Complainant, v. The Unknown  
Heirs of Clark Hamill, Deceased, Defendants.  
Equity No. 28,047. Doc. 68.**

The object of this suit is to declare title in Edwin W. Spalding to duplicate bounty warrant No. 56,276, the original of which was issued to Clark Hamill on the 14th day of February, 1857, under act of Congress of March 3, 1855. On motion of complainant, it is, this 29th day of May, A. D. 1906, ordered that the defendants, the unknown heirs, next of kin, legatees, or devisees of Clark Hamill, deceased, cause their appearance to be entered herein on or before the first rule day occurring three months after the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for the period of three months in The Washington Law Reporter and

[Seal] The Washington Post. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. June 1, 8; July 6, 13; Aug 3, 10

**SIXTH INSERTION.****J. J. Darlington and W. C. Sullivan, Solicitors**

**In the Supreme Court of the District of Columbia.**

**James Martin v. Jeremiah Boothe et al.**

No. 26,280. Equity.

**ORDER.**

The object of this suit is to perfect complainant's title to lot 6, in square east of square 664, Washington, D. C. On motion of the complainant, it is, this 6th day of June, A. D. 1906, ordered that the defendant, Jeremiah Boothe, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs, devisees, and alienees of Nathaniel Walker Appleton, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published for three months, once a week for three successive weeks during the first month, and twice a month during each of the two succeeding months in The Washington Law Reporter and The Washington Times. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. Je 8, 15, 22, Jy 6, 13, au 3, 10

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### Physician's Evidence—No Inference from Refusal to Waive Privilege.

In *Pennsylvania Railroad Co. v. Durkee*, decided June 7, 1906, by the United States Circuit Court of Appeals for the Second Circuit, the question was presented as to whether an inference unfavorable to the plaintiff might be drawn from her refusal to waive the privilege with respect to the testimony of a physician who had treated her for the injury. The trial court refused to charge the jury, as requested by the defendant, that from the refusal of the plaintiff to permit the physician to testify as to what he treated her for and what he found her condition to be, they might infer that his testimony would be unfavorable to her. On the contrary, the trial court charged the jury as follows:

"I charge on the other hand that it is her privilege and her right, awarded to her by the law, to object to her physician giving any evidence, and that you are not permitted to infer because she exercised that right that the physician would have given evidence in one way or the other, favorable or unfavorable, simply the law boldly and wholly shuts it out except at her instigation; but that she was treated by Dr. Peterson appears according to his statement, and you have a right to consider that fact, and only that, as far as his evidence is concerned."

This ruling was assigned as error in the appellate court; but that court affirmed its correctness, saying in part:

"To hold that because the patient does not waive or abandon the prohibition inferences ad-

verse to his side of the controversy may be drawn by the jury would be to fritter away the protection it was intended to afford. When it is the legal right of a party not to have some specific piece of testimony marshalled against him, he may exercise that right without making it the subject of comment for the jury. The law of evidence provides that the copy of a document shall not be proved, until the failure to produce the original shall be satisfactorily explained. When a copy is offered the party against whom it is offered may, if he choose, waive this particular objection, but if he does not are the jury to be allowed to draw unfavorable inferences from his insisting upon the cause being tried in the orderly way in which the law provides?"

### Liability of Common Carriers to Their Employees.

Among the important legislation relating to the District of Columbia was the following, approved June 11, 1906, and entitled "An act relating to liability of common carriers in the District of Columbia and Territories and common carriers engaged in commerce between the States and between the States and foreign nations to their employees:"

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That every common carrier engaged in trade or commerce in the District of Columbia, or in any Territory of the United States, or between the several States, or between any Territory and another, or between any Territory or Territories and any State or States, or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, shall be liable to any of its employees, or, in the case of his death, to his personal representative for the benefit of his widow and children, if any, if none, then for his parents, if none, then for his next of kin dependent upon him, for all damages which may result from the negligence of any of its officers, agents, or employees, or by reason of any defect or insufficiency due to its negligence in its cars, engines, appliances, machinery, track, roadbed, ways, or works.

SEC. 2. That in all actions hereafter brought against any common carriers to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery where his contributory negligence was slight and that of the employer was gross in comparison, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee. All questions of negligence and contributory negligence shall be for the jury.

SEC. 3. That no contract of employment, insurance, relief benefit, or indemnity for injury or death entered into by or on behalf of any employee, nor the acceptance of any such insurance, relief benefit, or indemnity by the person entitled thereto, shall constitute any bar or defense to any action brought to recover dam-

ages for personal injuries to or death of such employee: *Provided, however,* That upon the trial of such action against any common carrier the defendant may set off therein any sum it has contributed toward any such insurance, relief benefit, or indemnity that may have been paid to the injured employee, or, in case of his death, to his personal representative.

SEC. 4. That no action shall be maintained under this Act, unless commenced within one year from the time the cause of action accrued.

SEC. 5. That nothing in this Act shall be held to limit the duty of common carriers by railroads or impair the rights of their employees under the safety-appliance Act of March second, eighteen hundred and ninety-three, as amended April first, eighteen hundred and ninety-six, and March second, nineteen hundred and three.

**Corporations.**—The purchase, by a corporation, of shares of its own capital stock is held, in *Hall v. Alabama Terminal & I. Co.*, (Ala.), 2 L. R. A. (N. S.), 130, to be a fraud upon its creditors.

The right of majority stockholders, who have voted to dissolve the corporation, to proceed for a judicial declaration of forfeiture of charter, is upheld in *Chilhowee Woolen Mills v. State ex. rel. Majority Stockholders Chilhowee Woolen Mills Co.* (Tenn.), 2 L. R. A. (N. S.), 493, under a statute providing that an action lies for dissolution of a corporation if it does acts which amount to a forfeiture of its rights.

The right to make preferred stock non-voting is upheld, under the Missouri statute, in *State ex. rel. Frank v. Swanger* (Mo.), 2 L. R. A. (N. S.), 121.

A statutory agent of a foreign corporation to receive service of summons is held, in *Bennett v. Supreme Tent, K. of M.* (Wash.), 2 L. R. A. (N. S.), 389, to have no power to admit or waive service where it has not been properly made.

**Banks.**—The custom of a bank to send paper received for collection to the bank on which it is drawn is held, in *Farley Nat. Bank v. Pollak & Bernheimer* (Ala.), 2 L. R. A. (N. S.), 194, to be void for unreasonableness.

Funds of an insolvent bank on deposit with a correspondent bank are held, in *Clark v. Toronto Bank* (Kan.), 2 L. R. A. (N. S.), 83, to pass to the receiver, rather than the holder of a draft issued before the appointment of the receiver, but not presented until after the drawee had notice of the receivership.

**Homicide.**—An instruction in a prosecution for homicide that self-defense can not be made out unless the accused in good faith endeavored to escape is held, in *State v. Gardner* (Minn.), 2 L. R. A. (N. S.), 49, to be reversible error, where the proved circumstances precluded any means of escape or retreat without great increase in peril of death or of great bodily harm, notwithstanding that the jury was also instructed that accused was not necessarily bound to retreat. The necessity of "retreat to the wall" in homicide is the subject of a note to this case.

## Court of Appeals of the District of Columbia.

FREDERICK A. HYDE ET AL., APPELLANTS,

v.

UNITED STATES.

CRIMINAL PROCEDURE; JOINDER OF OFFENSES; INDICTMENT; CERTAINTY OF ALLEGATIONS.

1. The joinder in one indictment of forty-two counts, each charging a conspiracy to defraud the United States out of the possession of and title to its public lands, is authorized by section 1024 R. S.; but it is within the discretion of the trial court, where the offense charged in the several counts is the same, to require the Government to elect upon which it will go to trial.
2. An indictment for conspiracy alleging that defendants, with other persons, conspired to defraud the United States of the title to divers large tracts of the public lands open and to be open to selection in lieu of lands included within forest reserves established and to be established in California and Oregon, in pursuance and by means of a false and fraudulent practice whereby certain defendants were to obtain from those States school lands within such forest reserves and exchange such lands for the public lands of the United States, held not defective in failing to describe the particular tracts of land to which the alleged conspiracy related.
3. When persons enter into a conspiracy to defraud the United States of public lands, the crime is complete, even when no particular lands are selected by them. It is enough that the conspiracy had in view the acquiring of the lands; and it is not essential that in the minds of the conspirators the lands shall have already been identified.
4. Such an indictment held not too vague or uncertain in its allegations as to the means to be used in carrying out the alleged fraud.
5. References in the several counts of an indictment subsequent to the first to the "circumstances and conditions set forth in the first count," etc., held sufficient to incorporate such matters into the subsequent counts.

No. 1660. Decided April 6, 1906.

APPEAL (specially allowed) by defendants from an order of the Supreme Court of the District of Columbia, holding a Criminal Court (No. 24,141), overruling a demurrer to an indictment. Affirmed.

*Mr. R. Golden Donaldson, Mr. A. S. Worthington, Mr. F. H. Platt, and Mr. J. C. Campbell* for the appellants.

*Mr. D. W. Baker and Mr. A. B. Pugh* for the United States.

Mr. Justice McCOMAS delivered the opinion of the Court:

This is a special appeal allowed from an interlocutory order overruling demurrers to an indictment against Frederick A. Hyde, John A. Benson, Henry P. Dimond, and Joost H. Schneider. The crime charged against these defendants is a conspiracy to defraud the United States out of the possession of and the title to various large tracts of its public lands in California and Oregon.

The indictment is 94 pages in length and contains 42 counts, the first and most important of which covers 8 pages of the record. An explanatory statement of Congressional legislation and of certain aspects of the land laws will enable us to shorten this discussion. The act of March 3, 1891, section 24 (26 Stat., 1095, 1103), empowered the President from time to time to set apart and reserve in any State or Territory having public land bearing forests, in any part

of the public lands, wholly or in part, timber land, as public reservations; and by proclamation to establish and define the limits of such reservations. The act of June 4, 1897 (30 Stat., 1136) added that where a tract covered by an unperfected bona fide claim or by a patent is included within the limits of the public forest reservation, the settler or owner thereof may relinquish such tract and select in lieu thereof vacant land open to settlement not exceeding in area the tract covered by his claim or patent, and do so without charge, credit being allowed for the time spent by him on the relinquished claims. The establishment of forest reserves had steadily progressed and yearly large areas and small were withdrawn to preserve the remaining forests on public land and to protect forests within such reservations for the purpose of maintaining conditions favorable to continuous water flow and to preserve a permanent timber supply for the uses of the people. The last mentioned act was to tempt settlers in forest reserves to exchange their locations for lands still open to settlement. The Land Office construed the phrase "covered by his claim or patent," to embrace any tract, the fee simple title to which had passed out of the United States by any means which are the legalequivalent of a patent.

From an early period Congress granted school lands to the various States wherein lay public lands, and usually sections 16 and 36, as is the case in California and Oregon, became school lands. The title to school lands passes by the grants when the lands are identified by survey, and, therefore, patents of the United States are not necessary to convey such title. (*Cooper v. Roberts*, 18 How., 173; *Beecher v. Wetherby*, 95 U. S., 517.) The General Land Office, under the act of June 4, 1897, held that surveyed school lands within forest reservations are within the meaning of the term "covered by a patent" in this act. The California Political Code, secs. 3494, 3495 and 3500, so far as we here need to speak, governs the disposal of school lands granted to that State. These sections provide (1) that a purchase of school lands can be legally made only by a person desiring the land *for his own use and benefit and for the benefit of no other person or persons whomsoever*, and who has made no contract or agreement to sell the land; (2) the applicant's affidavit must show these essential conditions; (3) and *any false statement* in the affidavit defeats the applicant's right to purchase; (4) and not exceeding 640 acres may be purchased by any one person.

The statutes of Oregon regulating the sale of school lands granted to that State are like those of California, except that only 320 acres may be sold to any one person. Hill's Anno. Laws of Ore., (vol. 2, secs. 3617, 3618.) The Supreme Courts of California and Oregon have steadily held that all facts which the applicant for purchase is required to set out in his affidavit must be true, else the proceedings will be invalid.

The statutes of both States provide that certificates of purchase shall be issued to persons who have applied to purchase school lands upon the required cash payment being made, and that such certificates of purchase and all rights acquired thereunder may be sold by deed or assignment executed and acknowledged in the

manner required for other conveyances of real estate, and upon the surrender of such certificate of purchase by the original holders or by their assignees accompanied by payment of the balance of the purchase money, patents shall be issued to the original holders or the assignees, as the case may be. (P. C. of Cal., secs. 3514, 3515, 3519; Hill's Anno. Laws of Ore., sec. 3605.) The foregoing will be helpful to an understanding of the description in the indictment of the several means which were to be used by the alleged conspirators to obtain school lands from these two States, and in connection with the filing of applications to purchase such lands, the use of the words "assignment of the same, and of the certificates of purchase thereof."

The first count of this indictment alleges that on October 24, 1901, and from thence until February 1, 1904, the defendants, Hyde and Benson, were engaged at San Francisco in the business of obtaining from the United States title to its public lands outside of forest reserves in lieu of school lands lying within them, by Hyde and Benson obtained from the States of California and Oregon; that Dimond was their attorney in this business; Schneider their employee therein, and Harlan and Valk employees in the General Land Office with duties pertaining to the exchange of lands outside of forest reserves in lieu of lands within; that Allen was a forest superintendent, and Taggart a forest supervisor in the public land service of the United States.

That Hyde, Dimond, Benson, and Schneider on December 30, 1901, in the District of Columbia unlawfully did conspire, combine, confederate, and agree together with other persons to the grand jurors unknown, knowingly, wickedly, and corruptly to defraud the United States out of the title to "divers large tracts of the public lands of the United States open and to be open to selection . . . in lieu of lands included and to be included within the limits of forest reserves . . . in the said States of California and Oregon," by obtaining for their own benefit from the United States such title "in pursuance and by means of a false and fraudulent practice whereby Hyde and Benson were to obtain fraudulently from the States of California and Oregon title to school lands within such forest reserves and open to purchase from those States by residents.

(a) By application for purchase, assignment of same, and of certificates of purchase (1) in the names of *fictional* persons, (2) and in the names of *persons not really desiring and not qualified to purchase*, supporting such applications with forged and fraudulent affidavits and false affidavits.

(b) As part of the fraudulent practice Hyde and Benson were to cause to be relinquished, assigned, transferred, and conveyed, by means of false and forged relinquishments, assignments, and conveyances to the United States, directly or indirectly through Hyde or other divers agents of Hyde and Benson, the pretended rights of such *fictional* persons, and require and procure such *real* persons to make relinquishments, assignments, transfers, and conveyances directly or indirectly through Hyde or through the agents of Hyde and Benson, to wit, Clark, Baldwin, Liebes, and Dimond, to

the United States of the titles to such school lands, so by the use of the names of such *real* persons, fraudulently to be obtained, from the said States and thus in either case in exchange for public lands to be selected and for titles thereto by patent to be obtained by and on behalf of Hyde and Benson in the names of such *fictitious* persons or *real* persons or in the names of Hyde, Clark, Baldwin, Liebes, Dimond, or Hyde and Company, from the public lands in lieu of such school lands within forest reserves.

(c) Hyde and Benson were in like manner to exchange school lands already before the said period obtained by them from the said States in the same fraudulent manner for public lands lying outside of forest reserves.

(d) Hyde and Benson were, during said period, to induce and procure and take advantage of the fact that they had before the said period induced and procured Harlan and Valk, employees of the General Land Office, by paying them money for that purpose, corruptly to furnish Hyde and Benson information concerning the status in the Land Office of all matters pertaining to their said business, and to expedite contrary to their duty the matters in the Land Office in behalf of Hyde and Benson by securing the approval thereof in advance of the due course of business.

(e) Hyde and Benson during said period were to induce and procure and take advantage of the fact that they had before the said period induced and procured Allen and Taggart, forest officials, corruptly and contrary to duty, to furnish Hyde and Benson information by them as officials gathered, to allow Hyde and Benson to make for them such official reports and recommendations as should be to the interest of Hyde and Benson, and then to transmit such reports so prepared to their superior officers.

(f) And as the final part of the alleged fraudulent practice, that Dimond, as attorney for Hyde and Benson, was to assist them in their business by appearing in their behalf before the proper officers of the Department of the Interior and the General Land Office and urge speedy action by such officers, Dimond well knowing the fraudulent character of said business and that his acts as an attorney were done in pursuance of the unlawful conspiracy; and Schneider, as the employee of Hyde and Benson, was to assist them in obtaining from California and Oregon the fraudulent, fictitious, and worthless titles to school lands by negotiating with the persons willing to sell and allow the use of their names, and of forging and procuring to be forged the necessary documents for securing titles to such lands from the said States in the names of fictitious persons, and for relinquishing and conveying the same to the United States, Schneider well knowing the fraudulent character of these documents and the purpose for which they were to be used.

The first count proceeds to allege as an overt act that in pursuance of the unlawful conspiracy and to effectuate the object thereof and to defraud the United States of the title to a tract of land in the State of Washington here accurately described, shortly before in pursuance of the said fraudulent practice selected in the name of Crawford W. Clark, by and on behalf of Hyde and Benson in lieu of certain school lands before ob-

tained by Hyde and Benson from Oregon and California in pursuance of the said fraudulent practice and by the means aforesaid, which tracts are particularly described, the defendant, Dimond, on December 30, 1901, unlawfully presented to the Commissioner of the Land Office a certain letter here set out in full, and which purports to be an appearance by Dimond as attorney for Clark concerning his forest reserve lien selection, which letter was so presented in pursuance of the unlawful conspiracy.

We have fully set out the alleged fraudulent practice as described in the first count, because counts two to thirty-four, inclusive, are identical in form except that to the conspiracy different dates are assigned and in each count a different tract of school land and a different tract of selected land is described, and that in addition to Dimond's notice of appearance as an overt act some of the counts allege that other letters urging action on the application or inclosing documents to supply some defect therein were sent to the General Land Office. In each count from two to thirty-four, inclusive, it is alleged that Hyde, Benson, Dimond, and Schneider, at a date assigned, and at Washington, in the District of Columbia, "under the circumstances and conditions set forth in the said first count, unlawfully did conspire, combine, confederate, and agree together and with divers other persons to the grand jurors aforesaid unknown, knowingly, wickedly, and corruptly to defraud the said United States out of the possession and use of and title to divers large tracts of the public lands open and to be open to selection, in lieu of land included and to be included within the limit of forest reserves established and to be established, under the laws of the said United States in that behalf, in the States of California and Oregon, by obtaining from the said United States, by means of the false and fraudulent practice described in the said first count, and appropriating for the private gain and use of themselves as in the said first count set forth such possession, use, and title; that in pursuance of the said unlawful conspiracy, combination, confederation, and agreement, and to effectuate the object of the same, and to appropriate and defraud the said United States out of the possession and use of and the title to a certain tract of the public land aforesaid, that is to say (and here a particular tract is described), "in pursuance of the said fraudulent practice in lieu of certain school lands before then obtained" by Hyde and Benson from the State of Oregon "in pursuance of the same fraudulent practice, and in the manner and by the means in the said first count set forth," lands lying within the limits of a forest reserve. Then follows the allegation of the overt act.

The counts from 35 to 42, inclusive, are identical in form, except that instead of an overt act relating to selected land and letters concerning the same, these counts allege that in pursuance of the conspiracy to defraud the United States out of the title to the tracts of public land described in the several counts from the first to the thirty-fourth, inclusive, in some counts that said John A. Benson, at a date named, at the same place, "unlawfully did pay to the said Woodford D. Harlan," mentioned in the said



first count, money, and in another count, at a date assigned and with the identical verbal description, paid money to William E. Valk.

Of the assignments of error it is necessary for us to consider seven, and these really involve but three questions, which will be considered in order, for these embrace the material objections urged by defendants' counsel to this indictment, presented by the counsel for John A. Benson and by the counsel for Frederick A. Hyde.

1. This indictment is said to be fatally defective in that it improperly joins and unites forty-two different and independent charges of conspiracy, to the great prejudice of defendants.

Each count of the indictment, it is true, alleges the formation of a conspiracy to defraud the United States out of public land by a fraudulent practice. The second and each subsequent count refers to the first count for the precise description of this alleged fraudulent practice, and each count lays a separate date and separate counts lay a different date of the formation of the conspiracy. Each of the forty-two counts purports to charge an independent and separate conspiracy. It is true that the face of the indictment shows that the public land alleged to have been selected in the first thirty-four counts alleges the selection of thirty-one of these in the names of one of two persons, Frederick A. Hyde and C. W. Clark, and this circumstance suggests that the pleader has only varied the form and substantially relies upon one conspiracy, while the means and methods of the alleged fraudulent conspiracy fully set out in the first count indicates that it may be found at the trial the defendants are called on to defend themselves against one and the same conspiracy. The indictment itself on these demurrers should be here considered as if each count alleged a distinct conspiracy entered into by the same persons in the same manner and by the same means with the same object, namely, to defraud the United States out of public land. We think the argument urged before us that it would be a great hardship upon the defendants to be called upon to answer to forty-two conspiracies, is an argument which the trial court below should and would weigh carefully. It is within the power of that court, if advised that the Government prosecutes as for one conspiracy, to compel the Government to elect upon which counts it will go to trial. "The application for a prosecutor to elect is an application to the discretion of the judge founded on the supposition that the case extends to more than one charge and may therefore be likely to embarrass the prisoner in his defense." *Regina v. Trueman*, 8 Car. & P., 727; *Pointer v. United States*, 151 U. S., 396, 402.

We are here reviewing the judgment of the learned court below overruling the demurrers to all counts of this indictment. Section 1024, Revised Statutes, sanctions an indictment in this form and provides that when there are several charges against any person for the same act or transaction or for two or more acts or transactions connected together or for two or more acts of the same class of crimes or offenses which may be properly joined, instead of having several indictments, the whole may be joined in one indictment in separate counts.

That section does not limit the discretion of the pleader or grand jury to any number of counts. It is not for us here to require the Government to elect; it may or may not be the duty of the trial court to so require. This objection, in this instance, is not ground whereon we should sustain these demurrers. In *Benson v. United States*, ante page 366, decided at this term, this court said: "The Supreme Court has repeatedly sanctioned joinder of offenses where the different acts or transactions were not so clearly of the same class of offenses as are those joined in the different counts of this indictment." In *Pointer v. United States*, 151 U. S., 396, 403, the court sustained an indictment containing two counts charging the defendant with committing two murders. The court quotes Archbold, who says that in cases of felony the judge may require the prosecutor to select one, and this is technically termed putting the prosecutor to his election. Archbold adds, "but this practice has never been extended to misdemeanors." The court proceeds to say:

"While recognizing as fundamental the principle that the court must not permit the defendant to be embarrassed in his defense by a multiplicity of charges embraced in one indictment and to be tried by one jury, and while conceding that regularly or usually an indictment should not include more than one felony, the authorities concur in holding that a joinder in one indictment, in separate counts, of different felonies, at least of the same class or grade, and subject to the same punishment, is not necessarily fatal to the indictment upon demurrer or upon motion to quash or on motion in arrest of judgment, and does not, in every case, by reason alone of such joinder, make it the duty of the court, upon motion of the accused, to compel the prosecutor to elect upon what one of the charges he will go to trial. The court is invested with such discretion as enables it to do justice between the Government and the accused. If it be discovered at any time during a trial that the substantial rights of the accused may be prejudiced by a submission to the same jury of more than one distinct charge of felony among two or more of the same class, the court, according to the established principles of criminal law, can compel an election by the prosecutor. That discretion has not been taken away by section 1024 of the Revised Statutes. On the contrary, that section is consistent with the settled rule that the court, in its discretion, may compel an election when it appears from the indictment, or from the evidence, that the prisoner may be embarrassed in his defense, if that course be not pursued." *Ingraham v. United States*, 155 U. S., 434, 436; *Williams v. United States*, 168 U. S., 382, 390."

In a similar case it is said: "It would seem from the case, that in this instance, the several charges are for the same transaction, or for transactions connected together. They appeared to have occurred at the same time and were proved by the same witnesses. But, if not, the offenses are similar in character, the challenges are the same, and the punishments alike in kind, differing only in degree, and they are, therefore, of 'the same class of crimes' within the meaning of section 1024. Whether the joinder was calculated to embarrass the prisoner,

and, therefore, the offenses not 'properly joined,' within the meaning of the statute, was a question to be determined by the judge in his discretion, on a motion to quash or to compel an election. (Comm. v. Birdsall, 69 Penn., 482.) United States v. Bennett, 17 Blatch., 362; a pertinent and instructive case is United States v. Howell, 65 Fed. Rep., 402.

The court properly overruled the demurrers to the joinder of the counts in this indictment. We do not doubt that should the defendants be too much embarrassed by them, the defendants may safely prefer their request at the trial of this cause. "Whether such request should be granted depends upon the special circumstances of the case and rests in the sound discretion of the trial court." *Lorenz v. United States*, 24 App. D. C., 367; 32 Wash. Law Rep., 824.

2. Defendant's counsel contend that "each count of the indictment is fatally vague, uncertain and indefinite, in that it does not contain such a statement of the charge intended to be made against the defendants, as will enable them to prepare their defense or to plead an acquittal or conviction as a bar to subsequent prosecution, or enable the court to decide whether the facts alleged are sufficient to support a conviction."

There is no question that the indictment attempts to charge a conspiracy to defraud the United States. In *Hyde v. Shine*, 199 U. S., 62, 83, the court say of this pleading: "The indictment under section 5440 charges a conspiracy to defraud the United States out of the possession, use of, and title thereto of divers large tracts of public lands, and if the title to these lands were obtained by fraudulent practices and in pursuance of a fraudulent design, it is none the less within the statute, though the United States might succeed in defeating a recovery of the State lands by setting up the right of a *bona fide* purchaser. Under the circumstances it can not be doubted that the United States might maintain a bill to cancel the patents to the exchanged lands procured by these fraudulent means, notwithstanding its title to the forest reserve lands might be good."

Defendants' counsel contend that each count of the indictment is fatally defective, in that it fails to specify and describe the tracts of land to which the alleged conspiracy relates. If this be true, it must follow that criminal pleading, which may be readily adapted to ordinary cases, is powerless to serve the ends of justice and to permit the framing of an indictment for a gigantic conspiracy such as is sought to be charged in this indictment. The indictment must specify with certainty, that is, certainty to a common intent in general, the conspiracy, because the accused must be advised of the essential particulars of the charge against them, and the court must be able to decide whether the scheme is stated with such particularity that the facts alleged are sufficient to support a conviction. It is true, also, that if the indictment insufficiently charges the conspiracy, averment of overt acts done in furtherance of the objects of the conspiracy, and the description of a tract of land as part of the overt act, can not cure the insufficiency of the indictment in the charge of conspiracy. Defendants' counsel rely upon a number of cases wherein the conspiracy was to

defraud the United States out of specified tracts of public land. When examined, these cases will show that it was the object of the conspiracy charged to procure the particular land and none other.

In *United States v. Reichart*, 32 Fed. Rep., 147, the conspiracy to defraud the United States out of public lands contained some description, but the lands were described by initial letters of locality and points of the compass, and Justice Field held that indictments should use common words, so that one of ordinary intelligence could understand the meaning, and abbreviations and initials, as, for instance, S. B. M., supposed to denote San Bernadino Meridian, was language in the reading of the indictment in the hearing of the accused he could not be expected to understand. The description attempted was bad, but it does not follow that the absence of any description in a case where description of land is impossible, because of the wide range of the conspiracy, is bad because of the case cited.

In each of the counts it is alleged that the defendants, with other persons, conspired to defraud the United States out of the title to divers large tracts of the public lands open and to be open to selection in lieu of lands included within forest reserves established and to be established in California and Oregon, in pursuance and by means of a false and fraudulent practice whereby Hyde and Benson were to obtain from California and Oregon school lands in such forest reserves and exchange such school lands for the public lands of the United States. Nowhere in the indictment does it appear that the conspiracy was to secure particular school lands found in forest reserves and then exchange these for particular lands in the minds of the conspirators. In each count it appears by the overt acts that in pursuance of the conspiracy the defendants selected certain public lands to be exchanged for certain school lands. It does not appear that such lands were in their minds when they conspired. If the defendants' objection be held good, we must in effect hold that the extensive conspiracy charged against these defendants by its dimensions rescues them from punishment designed by this statute if they are guilty. It is fortunate for the ends of justice in such cases that "... in stating the object of the conspiracy, the same certainty and strictness are not required as in the indictment for the offense conspired to be committed. Certainty to a common intent sufficient to identify the offense which the defendants conspired to commit is all that is required. When the allegation in the indictment advises the defendants fairly what act is charged as the crime which was agreed to be committed, the chief purpose of pleading is attained. Enough is then set forth to apprise the defendants so that they may make a defense. *United States v. Stevens et al.*, 44 Fed. Rep., 132, 141."

The pleader who framed this indictment fully stated the conspiracy as he understood it to exist, and has sufficiently alleged that the scheme was broad enough to include the purpose of the defendants to fraudulently obtain title to any public lands of the United States open and to be open to selection in lieu of school lands of

California and Oregon within forest reserves. If we must hold the indictment bad because the conspiracy was as broad as stated, we must admit that the law is inadequate to compass the indictment and punishment of a conspiracy so extensive; that the law is adequate to punish a conspiracy to fraudulently acquire one parcel of public land and inadequate to punish a conspiracy to acquire a very large number of tracts of public lands, so numerous that the conspirators themselves had not yet in mind the lands to be selected by the conspirators.

The Supreme Court has stated the true rule for the pleading of such a conspiracy as the one described in the indictment before us. The court says: "The only matter to which our consideration is directed is as to the sufficiency of the indictment. It is objected, in the first place, that there is no specification of the particular tract or tracts of which the defendants conspired to defraud the United States. There is nothing more definite than this: Large tracts of land in the county of Rollette, State of North Dakota, such lands being public lands of the United States, open to entry under the homestead laws at the local land office of the United States at Devil's Lake City, in said State. It is true no tract is named by number of section, township, and range, and the language is broad enough to include any or all of the public lands of the United States situate within that county and subject to homestead entry at that land office. *But manifestly the description in the indictment does not need to be any more definite and precise than the proof of the crime.* In other words, if certain facts make out the crime, it is sufficient to charge those facts, and it is obviously unnecessary to state that which is not essential. Can it be doubted that if these defendants entered into a conspiracy to defraud the United States of public lands, subject to homestead entry at the given office in the named county, the crime of conspiracy was complete, even if no particular tract or tracts were selected by the conspirators? It is enough that their purpose and their conspiracy had in view the acquiring of some of those lands, and it is not essential to the crime that in the minds of the conspirators the precise lands had already been identified." *Dealy v. United States*, 152, U. S., 539, 543.

And so, in the indictment we are considering, where certain facts make out the crime, it is sufficient to charge those facts, and when, as here alleged, these defendants entered into a conspiracy to defraud the United States of public lands, the crime was complete even when no particular tracts were selected by the conspirators. It was enough that their conspiracy had in view the acquiring of some of those lands; and we hold it is not essential to the crime that in the minds of the conspirators the precise lands had already been identified. It is true that in *Dealy's* case, where the court was speaking of public lands in the indictment there considered, the allegation was that the defendants conspired to defraud the United States of the possession of large tracts of lands in Rollette county in North Dakota. Obviously there is no geographical limitation to the court's statement that it is not essential to the crime that the conspirators have already identified the lands

in their minds. The requisite is that the description of the conspiracy in the indictment need not be any more definite and precise than the proof of the crime and it is only necessary to charge the facts which constitute the crime. Each count in this indictment charges that the defendants conspired to defraud the United States out of divers large tracts of the public lands, that is to say, "some of the tracts of the public lands." "Divers large tracts," means, in our opinion, some large tracts. They conspired to defraud the United States out of the title to public lands open and to be open to selection.

It is clear in respect of the lands to be open the conspirators could not have had in mind definite tracts capable of specific description by the pleader in charging this conspiracy. Therefore we think, if upon trial, the proof should be that the defendants conspired to defraud the United States of certain definite tracts of land, that these were agreed upon and well understood and that the object of the conspiracy was to defraud the Government of certain particular lands and none other, the several counts of this indictment do not describe such a conspiracy, and upon such proof there would be a variance. If the proof, however, should be that the conspiracy was of the general character the indictment describes, and that in pursuance of it the school lands were to be exchanged "for public lands to be selected" and that "in pursuance of the said unlawful conspiracy" and "in pursuance of the said fraudulent practice" certain tracts described in the first count, for instance, were selected in the name of Crawford W. Clark, we think there would be no variance. As in the case last cited, each count in the indictment here is, in form, a distinct charge of a separate offense, and hence a verdict of guilty or not guilty, as to it is not responsive to the charge in any other count, and a verdict of not guilty as to any one of the counts in this indictment is not necessarily a finding against any conspiracy, but only that the conspiracy and the overt act therein stated did not both exist, while a verdict of guilty upon any other count finds both the conspiracy and the overt act named therein. Upon conviction hereunder, the indictment as a whole would make a clear record of the offense for which the conviction was had and prove ample protection to defendants from other prosecutions for the particular offenses for which he had been convicted. It is not important that the conspiracy is averred to have been entered into more than two months after Benson and Hyde had engaged in the business, before the defendants, including Hyde and Benson, with others conspired, as alleged.

We do not think the indictment too vague and uncertain in its allegations as to the means to be used to effect the alleged fraud. School lands were to be obtained fraudulently from California and Oregon by and on behalf of Hyde and Benson, in the names of fictitious persons upon applications to purchase to be filed in the names of such fictitious persons, and upon assignments of certificates of purchase to be issued upon applications to purchase to be filed in the names of real persons not qualified to purchase, and such school lands were to be relinquished, transferred, and conveyed, by means of false and forged relinquishments, assign-

ments, and conveyances, to the United States, either directly in the names of such *fictitious persons*, or indirectly either through the said Hyde, or through divers agents and attorneys of Hyde and Benson, to *real persons*, in exchange for public lands to be selected, and for titles thereto by patent to be obtained, by and on behalf of Hyde and Benson in the names of such *fictitious* or *real persons* and school lands were to be obtained fraudulently from said States by and on behalf of Hyde and Benson in the names of *real persons* upon assignments of certificates of purchase to be issued upon applications to purchase to be filed in the names of *fictitious persons*, and upon assignments of certificates of purchase to be issued upon applications to purchase to be filed in the names of *real persons not qualified to purchase*, and upon applications to purchase to be filed in the names of *real persons not qualified to purchase*, where there were to be no assignments of the certificates of purchase, and such school lands were to be relinquished, transferred, and conveyed to the United States, either directly, or indirectly through the said Hyde, or through the said agents and attorneys of Hyde and Benson, in exchange for public land to be selected, and for titles thereto by patent to be obtained, by and on behalf of Hyde and Benson, in the names of *real persons*.

Further, the defendants were by bribery to induce Harlan and Valk to aid defendants to hasten the approval of their fraudulent selections *in advance of their regular order* and to inform defendants respecting any investigation of their said fraudulent practice and by like means to induce forest reserve officials to aid defendants to secure the establishment of new forest reserves and the extension or reduction of forest reserves already established.

It should be noted that in *Dealy v. United States*, supra, in alleging fraudulent means for acquiring public lands the conspiracy charged embraced both *false* or *feigned* entries and *fictitious* entries. It is complained here that the defendants cannot know which lands were obtained in the names of *fictitious persons*, which in the names of *real persons*, and persons not qualified to purchase. We observe, in the *Dealy* case, where the court held the indictment good, there was no averment as to what lands were to be included among the false or feigned entries or what lands in the *fictitious* entries. We can not see how the defendants in this case can be prejudiced thereby. Each count names the person in whose name the land selected was to be acquired and thereby the United States was defrauded. A careful reading of all the counts shows that in the first 34 counts the land selected by and in the name of a person in lieu of certain school lands, and such person in 16 counts is Hyde or Hyde and Company, and in 15 counts is C. W. Clark; in one count the person who selected the land is Isaac Liebes; in one count Elizabeth Dimond, and in the one remaining count, A. S. Baldwin. This circumstance lessens considerably the burden of defense.

After a careful consideration of this indictment, we concur with the learned court below that it is not fatally defective because of the objections we have last considered.

3. Finally it is said that "each count of the

indictment subsequent to the first count is fatally defective, in that it contains no allegation of the particulars of the alleged conspiracy and does not contain sufficient words of reference to incorporate the allegations of the first count."

In the case of *Benson v. United States*, supra, decided this term, this court has very recently said concerning an indictment with the feature here objected to: "The references in both these counts to the circumstances and conditions set forth in the first count referred to, to avoid unnecessary repetition, in our opinion, is sanctioned by the decision of this court in *Lorenz v. United States*, 24 App. D. C., 363; 32 Wash. Law Rep., 824; see *Blitz v. United States*, 163 U. S., 308, 316; *Crain v. United States*, 162 U. S., 625." We need not repeat here, but we refer to the further discussion of this point in that case.

The references in the counts two to thirty-four, inclusive, to the conspiracy and fraudulent scheme set out in the first count are usually specific. It is charged that the conspiracy was entered into "under circumstances and conditions set forth in the said first count;" that defendants conspired to defraud the United States out of the title to public lands "by obtaining from the said United States by means of the false and fraudulent practice described in the said first count," and appropriating such title for their benefit "as in the said first count set forth," and "that in pursuance of the said unlawful conspiracy" and "to effect the object of the same," the alleged overt act was done; that the described public lands were selected by defendants "in pursuance of the same fraudulent practice and in the manner and by the means in the said first count set forth."

If we have correctly concluded that the conspiracy is definitely and clearly set forth in the first count, it will be conceded that if the same matter setting forth such conspiracy were repeated in the second count, such second count would be good. How then can the defendant be prejudiced? Mr. Bishop says: "The reference must be so full and distinct as in effect to incorporate the matter going before with that in the count wherein it is made." 1st Bishop New Crim. Proc., sec. 431; *Benson v. United States*, supra.

What prejudice comes to the defendants if the reference be sufficiently full to incorporate the matter going before with that in the count to which reference is made, and if reference be so clear and distinct that the defendant can not mistake that which has been read into the second count, assuming that the conspiracy and fraudulent practice has been properly set out in the first count? The objection of the defendants here is that the second count should be complete in itself and should not refer to the other count in aid of its averment. Surely this objection is an objection to form. Essentially it is that the language in which the conspiracy and fraudulent practice are set out in the first count should be repeated in the thirty-three succeeding counts. If it would be good in that form, why is it not good when incorporated by clear and distinct reference, so that the defendants could not possibly mistake the matter transferred bodily to the second and succeeding counts. And, as was said in *United States v. Jolly*, 37 Fed. Rep., 108,

111: "Our Revised Statutes (section 1025) forbid us to quash the indictment for that defect of form, as I think this clearly is; and we must, therefore, amend it by overlooking the defect, and reading the averments as if the words of the first count referred to as describing the warrant were inserted in this second count itself. It is not a technical amendment, but amounts to the same thing." *Wright v. United States*, 108 Fed. Rep., 811; *Peters v. United States*, 94 Fed. Rep., 127, 132. In this court such objection has not availed upon demurrer. *Lorenz v. United States*, supra, 362. In this last case decided by this court, the reference to the first count held sufficient, was even less specific, clear, and full than in the subsequent counts of the indictment we are here considering. See *United States v. Peters*, 87 Fed. Rep., 987.

What we before said disposes of all the counts save the last five. What we have said in discussing the third main objection to this indictment disposes, in our opinion, of the objection made to the last five counts charging bribery of Harlan and Valk. It is charged that Benson, one of the defendants, paid money "to the said Woodford D. Harlan mentioned in the said first count," and "to the said William E. Valk mentioned in the said first count." We hold that the reference in each count to the fraudulent practice, the scheme, the conspiracy, set forth in the first count are so full, explicit, and unambiguous as to leave no doubt that the allegations of such conspiracy and nothing more or different is intended to be incorporated in each of the counts subsequent to the first, that we believe it is plain that the said Harlan and Valk mentioned in the last five counts are necessarily by the incorporated allegations the same Harlan and Valk described in said first count as employees of the General Land Office in the official relation to the exchange of school lands for public lands of the United States there alleged; therefore, we hold these five counts are good.

Many embarrassments which defendants' counsel suggest are likely to happen to these defendants, upon the trial may be obviated by a bill of particulars. The conspiracy alleged in the indictment is so extensive that the trial court may determine in its discretion that the defendants should have more adequate notice, and, if so, the trial court has power to require the Government to furnish the defendants with a bill of particulars of the evidence intended to be relied on. It is not the office of the indictment to set out the evidence.

For the reasons we have assigned, the interlocutory judgment of the court below overruling the demurrer and requiring the defendants to plead must be affirmed and the cause remanded for further proceedings according to law, and it is so ordered.

**Affirmed.**

The right of a tenant to remove trade fixtures placed on the premises is held, in *Wadman v. Burke* (Cal.), 1 L. R. A. (N. S.), 1192, to be lost by entering into a new lease containing no recognition of his title to the fixtures, and binding him to surrender the premises in as good state and condition as reasonable use and wear would permit.

## Court of Appeals of the District of Columbia.

ANNIE J. DODGE, APPELLANT,

v.

MARY E. RUSH.

HUSBAND AND WIFE; RIGHT OF WIFE TO SUE FOR ALIENATION OF HUSBAND'S AFFECTIONS AND FOR CRIMINAL CONVERSATION.

1. Whatever may have been the rule of the common law, under modern statutes, a wife has a right of action for the alienation of the affections of her husband and consequent loss of consortium, and also a right of action for criminal conversation with her husband.
2. While it is necessary for plaintiff, in an action for alienation of the affections of her husband, to show that defendant's misconduct was an effective cause of the loss of consortium, it is not necessary that it shall have been the sole cause. Unhappy relations that may have existed between plaintiff and her husband, not caused by defendant's conduct, may affect the question of damages, but are not in any sense a justification or palliation of defendant's conduct.
3. The evidence in an action by a wife for the alienation of the affections of her husband, and for criminal conversation with her husband, considered and held sufficient to require its submission to the jury; and the direction by the trial court of a verdict for defendant held error.
4. Evidence of facts and circumstances occurring prior to the date stated in the declaration as that on which the first act of criminal conduct was committed, and which were of the same general nature as those occurring subsequently and explanatory of them, held admissible for that purpose.

No. 1663. Decided June 18, 1906.

**APPEAL** by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 47,231, entered upon a verdict directed by the court in an action for alienation of affections of plaintiff's husband and criminal conversation. Reversed.

*Mr. Smith Thompson, Jr., and Mr. Charles T. Hendler* for the appellant.

*Mr. Wm. H. White* for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This is an action for damages for the alienation of the affections of plaintiff's husband and for criminal conversation.

The declaration of the appellant, as plaintiff below, is in three counts.

Count one alleges the marriage of plaintiff with one Arthur J. Dodge on May 24, 1882, in the State of Wisconsin, the bonds of which remain undissolved. That while plaintiff and her said husband were living happily together, the defendant, Mary E. Rush, intending to injure plaintiff and deprive her of the society of her said husband, on, to wit, February 22, 1902, and on divers other days between that time and September 3, 1904, wickedly debauched and carnally knew the said Arthur J. Dodge. That thereby the affection of the said Arthur J. Dodge for plaintiff was alienated and destroyed; and plaintiff was deprived of the comfort, fellowship, society, and assistance of her said husband in her domestic affairs. That by reason of the premises plaintiff suffered great mental anguish, loss of social reputation, etc., and sustained damage in the sum of \$50,000.

Count two, repeating the allegations as to her marriage, etc., charges the defendant with enticing and alluring her said husband to abandon

plaintiff, thereby alienating his affection and depriving plaintiff of his affection, society, and assistance in her domestic affairs, and causing plaintiff great mental anguish, etc., to her damage in the sum of \$50,000.

Count three repeats the allegations of marriage and domestic happiness in count one, and charges the defendant with the commission of adultery with her said husband, between February 22, 1902, and September 3, 1904, whereby plaintiff was deprived of the affection, society, and assistance of her said husband, and made to suffer great mental anguish, etc., to her damage in the sum of \$50,000.

Defendant entered a plea of not guilty and issue was joined thereon.

At the close of plaintiff's evidence a motion was made by the defendant to direct a verdict for her, which was granted, and from the judgment thereon plaintiff has appealed.

Whatever may have been the foundations of the ancient rule of the common law which denied the wife a right of action for the alienation of the affection of her husband, and consequent loss of consortium, the reasons assigned for making a distinction between the right of the husband and the right of the wife in such case have long ceased to exist. The modern rule is thus well stated by the Court of Appeals of New York:

"The actual injury to the wife from the loss of consortium, which is the basis of the action, is the same as the actual injury to the husband from that cause. His right to the conjugal society is no greater than her right to the conjugal society of the husband. Marriage gives to each the same rights in that regard. Each is entitled to the comfort, companionship, and affection of the other. The rights of the one and the obligations of the other spring from the marriage contract, are mutual in character, and attach to the husband as husband and to the wife as wife. Any interference with these rights, whether of the husband or of the wife, is a violation, not only of natural right, but also of a legal right arising out of the marriage relation.

As the wrongs of the wife are the same in principle and are caused by acts of the same nature as those of the husband, the remedy should be the same." *Bennett v. Bennett*, 116 N. Y., 584, 590. See, also, *Wolf v. Frank*, 92 Md., 138, 143; *Warren v. Warren*, 89 Mich., 123, 127; *Price v. Price*, 91 Iowa, 693, 695; *Dietzman v. Mullen*, 108 Ky., 610; *Betzer v. Betzer*, 186 Ill., 537; *Gerner v. Gerner*, 185 Pa. St., 233, 236.

The underlying ground of the common law rule of discrimination between husband and wife in respect of this right, namely, the incapacity of the wife to maintain a separate action for a tort has been swept away by the modern legislation that has so generally relieved the wife of the ordinary disabilities of coverture. See cases above cited. *Wills v. Jones*, 13 App. D. C., 482, 495; 27 Wash. Law Rep., 19.

The gist of the action for alienation of affections is said to be the loss of consortium; that is, the loss of the conjugal fellowship, company, cooperation, and aid of the husband or wife. Loss of consortium is the actionable consequent of the injury, and alienation of affections is matter of aggravation. *Begouette v. Paulet*,

134 Mass., 123; *Evans v. O'Connor*, 174 Mass., 287, 291; *Neville v. Giles*, 174 Mass., 305; *Houghton v. Rice*, 174 Mass., 366, 368.

While it is necessary to plaintiff's recovery in such an action to show that the defendant's misconduct was an effective cause of the loss of consortium, it is not necessary that it shall have been the sole cause. Any unhappy relations that may have existed between the plaintiff and her husband, not caused by the conduct of the defendant, may affect the question of damages, but they are in no sense a justification or palliation of the defendant's conduct. *Hadley v. Heyward*, 121 Mass., 236, 239; *Rice v. Rice*, 104 Mich., 371, 380.

One of the two counts of the declaration in this case for the alienation of the affections of plaintiff's husband, as we have seen, charges his debauchment. The other charges that he was enticed and allured by the defendant, but omits the charge of illicit intercourse with him. Both, however, charge the loss of consortium as the result of the defendant's misconduct.

The third count, as appears from its recital in the foregoing statement of the case, is for criminal conversation.

Appellee concedes that the husband is entitled to maintain an action for criminal conversation with his wife, and that it is only necessary for him to prove in such an action the marriage and the adultery as charged. But it is contended that the wife has no right of action at common law for criminal conversation with her husband.

For the reasons heretofore given for recognizing the wife's right of action for the alienation of the affections of her husband, this contention must be denied.

While the injurious consequences of a wife's adultery may be more far-reaching because of probable difficulties and embarrassments in respect of the legitimacy of children, her conjugal rights are in principle the same substantially as his. Whatever the ancient doctrine may have been, modern morals and law recognize the equal obligation and right of husband and wife. Nor can the consent of either to his or her defilement affect the right of action of the injured spouse against the other wrongdoer.

Having affirmed the right of the plaintiff to maintain the action as set out in the several counts of her declaration, it remains to consider whether the evidence introduced in support thereof was sufficient to require its submission to the determination of the jury.

"The provinces of the court and jury in the Federal judiciary system are separate and distinct, and the line of division between them must be carefully observed. The ascertainment of this boundary is often a matter of difficulty in a particular case, and when the difficulty arises doubts should be resolved in favor of the right of trial by jury, which is the constitutional right of every suitor in the courts of common law. It is the province of the jury to determine the credibility of the witnesses and the weight of the evidence under proper directions in respect to the principles of law applicable thereto. And the court is never justified in directing a verdict except in cases where, conceding the credibility of the witnesses and giving full effect to every legitimate inference



that may be deduced from their testimony, it is nevertheless plain that the party has not made out a case sufficient in law to entitle him to a verdict and judgment thereon. Stated in many different ways, this, we think, is substantially the doctrine of the adjudged cases that control in this jurisdiction." *Adams v. Railroad Co.*, 9 App. D. C., 28, 30: 24 Wash. Law Rep., 364. See, also, *Ward v. D. C.*, 24 App. D. C., 524, 529: 33 Wash. Law Rep. 71.

Applying this rule to the evidence recited in the bill of exceptions, we are of the opinion that the court erred in directing the verdict.

There is no question of the sufficiency of the evidence to show that plaintiff was the lawful wife of Arthur J. Dodge, and that they were finally separated in May, 1903. Several children were born of this marriage, the last in 1899. The testimony then tended to show that plaintiff and her husband lived happily together from the time of their marriage in Wisconsin in 1882, until their removal to Washington in 1893 or 1894, and thereafter until November, 1899. That thereafter his manner to her began to change, and life commenced to be unpleasant. That from June, 1898, to May, 1900, her husband gave her an allowance of \$125 per month, and thereafter gave her \$5 per week while they remained in the home which they had previously purchased. That afterwards he only paid her board at a hotel. That they lived together until 1903, "but not happily since 1900." That since July or August, 1900, they "have not lived together as husband and wife."

The wife's cross-examination tended to show that prior to 1899 there had been occasional conditions of unpleasantness between them.

The evidence further tended to show that the defendant, Mrs. Mary E. Rush, occupied a home on S street between Fourteenth and Fifteenth streets N. W., from 1899 to June, 1904. It does not appear whether Mrs. Rush had a husband or not; if so, he did not live with her during the time mentioned.

The several servants of Mrs. Rush between the periods mentioned were introduced as witnesses. The first of these lived with Mrs. Rush from some time in 1899 to June 10, 1900, and testified that plaintiff's husband called to see Mrs. Rush two or three times a week during that period; and that she told witness he was getting her a place in a public office. The successor of this witness testified to the continued visits of Dodge to the defendant during her stay with the latter. His calls were three or four times a week. He generally came in the evening after 6 o'clock and would be in the house when witness left at 7.30. The testimony tended to show that Mrs. Rush's bed-room connected with the parlor or sitting-room on the first floor and could be looked into through a window opening on the back yard. The same witness testified that when Dodge called and went in the parlor, Mrs. Rush always closed the door, and used to tell witness to talk to her through the door when she wanted anything and not to "rubber." That witness became inquisitive, and on two occasions, one in July and the other late in 1900, peeped in the back window. That on the first occasion defendant was lying down on the bed "in her negligee," and Dodge was sitting on the bed with his

coat off; on the second, both were sitting on the bed with their arms about each other. The testimony of succeeding servants tended to show that Dodge's visits to the defendant continued until June, 1904. That he frequently called in the morning when defendant was ill and would walk directly into her bed-room. That defendant's instructions were, when Dodge was in the house, to tell other callers that defendant was not in.

The last servant testified to Dodge's continued visits, and that on February 22, 1902, he called during the day and entered the parlor. That witness heard voices in the bed-room. That during the time an express messenger called to have a package readdressed because of some omission. That witness went to the bed-room door opening in the back hall and called defendant; it was then the voices were heard. That defendant came to the door of the parlor in front hall, opening it sufficiently to receive the package, and was in her night clothes. That later defendant slept in a room on the second floor, and on one occasion witness saw Dodge and defendant go upstairs together, enter defendant's bed-room, and close the door. That Dodge came down between then and 11 o'clock. The witness also testified to mailing letters to Dodge for defendant at various times.

There was other evidence to show that prior to December 7, 1904, certain rugs and carpets formerly used in Dodge's home, and supposed by plaintiff to have been sent off for storage, were in defendant's house. On December 7, 1904, a deputy marshal, under a writ of replevin, found eight rugs and two pieces of carpet. Three of the rugs were in use in front and back parlor, and the remainder were in a closet. Other evidence tended to show that a bronze figure, formerly in Dodge's home, was on the mantel in defendant's room, and that Dodge's photograph occupied a place on the same mantel.

If the jury could give credit to the several witnesses, they might also infer from the circumstances testified to by them that the relations of the parties were illicit.

The existence of such relations, if so found, would clearly entitle the plaintiff to a verdict under the third count. And it was for the jury to say whether or not the defendant thereby enticed and allured the plaintiff's husband, alienated his affections, and caused her the loss of consortium.

It is contended on behalf of the appellee, that none of this evidence of circumstances prior to the 22d day of February, 1902, the earliest date of criminal conduct alleged in the declaration, can be considered.

To this we do not agree. In the first place, no objection was made to the evidence when offered, and an amendment of the pleadings might possibly take it out of the case on another trial. We are of the opinion, however, that the evidence was admissible. It is true that plaintiff's right to recover can not be rested upon such testimony alone, but as we have seen, there was other evidence within the period which would be sufficient foundation for a verdict. This being the case, the evidence of prior facts and circumstances of the same nature, connected with and explanatory of those within



the alleged period, was admissible for that purpose. 2 Greenleaf Ev., sec. 47; Com. v. Merriam, 14 Pick., 518; Com. v. Lobey, 14 Gray 91; Cuming v. Nicol, 34 Iowa, 533, 534.

There is a minor question on which error has been assigned, that, if undecided, may arise on another trial. Plaintiff as a witness on her own behalf was asked to state certain declarations made by her husband to her. It does not appear clearly what these were, as the witness was not permitted to answer. But assuming that they had relation to the defendant, or her conduct, we are of opinion that the court was right in their exclusion.

For the error committed in directing the verdict, the judgment will be reversed with costs, and the cause remanded for another trial in a manner not inconsistent with this opinion. It is so ordered.

Reversed.

**Carriers.**—The liability, or non-liability, of a carrier for an unprovoked assault by a third person upon a passenger is held, in *Brown v. Chicago, R. I. & P. R. Co.* (C. C. A. 8th C.), 2 L. R. A. (N. S.), 105, to depend upon the question whether the employees knew, or, by the exercise of proper care could have known, and guarded against, the threatened injury.

A purchaser who, before purchasing a ticket, was informed by the agent that a certain train stopped at his station, and was given a timetable also showing that the train was scheduled to stop there, was held, in *McDonald v. Central R. Co.* (N. J. Err. & App.), 2 L. R. A. (N. S.), 505, to have, by contract, a right to have the train stop at that point, rendering his ejection at the last preceding station wrongful.

A passenger notified that the next station at which the train will stop is his destination is held, in *Baltimore & O. S. W. R. Co. v. Mullen* (Ill.), 2 L. R. A. (N. S.), 115, to have a right to assume that the car will stop at the proper place for him to get off.

A railroad company is held, in *St. Louis Southwestern R. Co. v. White* (Tex.), 2 L. R. A. (N. S.), 110, to be liable for the proximate injury resulting from misdirections, given by its ticket agent when applied to by an intending passenger for information as to the best route by which to reach his destination, and furnishing a ticket in accordance with such directions.

A carrier having led passengers to believe that the doors of the vestibule to a car would be kept closed between stations, and then negligently left the doors open, was held liable, in *Orandall v. Minneapolis, St. P. & S. M. R. Co.* (Minn.), 2 L. R. A. (N. S.), 645, to a passenger injured thereby.

**Bills and Notes.**—One taking, in payment of equipment furnished to a contractor for the construction of a street railway, notes made by and payable to the contractor itself, containing the indorsement of the company for which the maker is performing the work, was held, in *J. G. Brill Co. v. Norton & T. Street R. Co.* (Mass.), 2 L. R. A. (N. S.), 525, to be chargeable with knowledge that the indorsement was merely for accommodation, and therefore ultra vires.

**Evidence.**—Evidence that deceased was known by accused to be a violent, passionate, and dangerous man is held, in *Com. v. Tircinski* (Mass.), 2 L. R. A. (N. S.), 102, to be admissible upon trial of one for killing a person who had assaulted him immediately before the striking of the fatal blow.

A married woman, relatrix in a bastardy proceeding, is held, in *Evans v. State* (Ind.), 2 L. R. A. (N. S.), 619, to be competent to testify to nonaccess of husband, under a statute making her a competent witness.

Secondary evidence to identify a record of conviction is held inadmissible, in *Junior v. State* (Ark.), 2 L. R. A. (N. S.), 652, until the absence of the magistrate who rendered the judgment, or his successor in office, the proper custodian of the record, is accounted for.

That a witness had never heard the matter discussed is held, in *Sinclair v. State* (Miss.) 2 L. R. A. (N. S.), 533, not to render him incompetent to testify to the general reputation of accused for peace or violence in the community.

Books of account are held, in *Lewis v. England* (Wyo.), 2 L. R. A. (N. S.), 401, to be admissible to prove cash loans, where the items appear in the general course of accounts as part of the business transactions between the parties.

**Husband and Wife.**—A contract between husband and wife for the support of their child was held, in *Ward v. Goodrich* (Colo.), 2 L. R. A. (N. S.), 201, not void as against public policy because entered into pending divorce proceedings, where neither its purpose nor effect in any way facilitated the granting of the divorce.

**Champerty.**—A contract to make compensation for services to be rendered in obtaining evidence and securing a divorce is held to be void in *Bargrover v. Pettigrew* (Iowa), 2 L. R. A. (N. S.), 260, and a recovery upon a quantum meruit for the services was also denied.

The rule exempting municipalities from liability for consequential damages from its sewerage system is held, in *Hart v. Neillsville* (Wis.), 1 L. R. A. (N. S.), 952, not to apply where the system was not constructed according to any regularly and properly adopted plan.

One who took possession of premises under an arrangement with the grantor, and subsequently agreed to pay rent to the grantee for a certain period, is held, in *Hodges v. Waters* (Ga.), 1 L. R. A. (N. S.), 1181, not to be estopped to deny liability to the latter for rent after the expiration of the term of such agreement, although he remained in possession of the premises.

One whose indorsement was secured upon a note by the trick of inducing him to sign his name to a paper placed upon the note in such a way that the ink penetrated through to the note is held, in *Yakima Valley Bank v. McAllister* (Wash.), 1 L. R. A. (N. S.), 1075, not to be liable.

**Divorce—Alimony.**—The obligation to comply with a provision of a decree of divorce directing the husband to pay the wife a certain sum annually as alimony, "so long as she may live," is held, in *Wilson v. Hinman* (N. Y.), 2 L. R. A. (N. S.), 232, to cease with his death. With this case is a note marshaling the authorities on the question whether alimony terminates on the death of the husband.

**Duress.**—One who negotiates a loan to take up an existing mortgage upon which foreclosure proceedings have been begun, and who is required, under protest, to pay an illegal bonus to secure a discharge of the mortgage, is held, in *Kilpatrick v. Germania L. Ins. Co.* (N. Y.), 2 L. R. A. (N. S.), 574, to act under duress, and consequently to be entitled to recover the amount paid.

#### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

#### Legal Notices.

##### FIRST INSERTION.

**Edwin Forrest, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Daniel O'Brien, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 25th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 25th day of July, 1906. MARY E. O'BRIEN, 1209 Princeton st.; JOHN E. McNALLY, 818 1st N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,068. Adm. [Seal.] 32-3t

**W. A. McKenney, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary Frances Waite, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 31st day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of August, 1906. MORRISON R. WAITE, of Cincinnati, Ohio; AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,835. Administration. [Seal.] 32-3t

**Lester & Price, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Bernard F. Ruppert, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of August, 1906. HENRY J. RUPPERT, 920 O st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,854. Administration. [Seal.] 32-3t

#### Legal Notices.

**Charles W. Main, Solicitor**  
In the Supreme Court of the District of Columbia,  
Ex Parte in the Matter of the Petition of Charles Edmund Mills. In Equity, No. 36,441.

##### ORDER OF PUBLICATION.

The object of the petition in the above-entitled case is to obtain a decree changing the surname of the petitioner from Mills to Palmer. The petition states that the petitioner was born in Baltimore, Maryland, in the year 1878; that his father, Charles Mills, died in the year 1880; that his mother, Katherine Mills, married one John Palmer in Baltimore, Maryland, in the year 1881, and that they removed to Washington, District of Columbia, sometime during said year and have resided continuously in said District since then; that the petitioner has lived and resided with his stepfather, John Palmer, since his (Palmer's) marriage with Katherine Mills, and that petitioner has always been known among his acquaintances and associates as Charles Edmund Palmer; that petitioner desires that his surname Mills shall be changed to Palmer in order to have uniformity in the family name, and because it will be beneficial to him in his business and in many other respects. It is thereupon, this 23d day of July, A. D. 1906, ordered by the Supreme Court of the District of Columbia, holding an equity term, that the petitioner cause a copy of this order, with the object and substance of the petition, to be inserted in The Washington Post and The Evening Star, two newspapers of general circulation published in the District of Columbia, once a week for three successive weeks before the 30th day of August, 1906, giving notice to whom it may concern to be and appear in this court, in person or by solicitor, on or before the 30th day of August, 1906, to show cause, if any there be, why a decree should not pass as prayed.

[Seal] ASHLEY M. GOULD, Justice. A true copy.  
Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 32-3t

**Wm. A. McKenney, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Fannie Bryan, Deceased.  
No. 13,804. Administration Docket —

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by the American Security and Trust Company, the executor named in said will, it is ordered, this 8th day of August, A. D. 1906, that Augustus R. Bryan, and all others concerned, appear in said court on Tuesday, the 11th day of September, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in "The Washington Law Reporter," "The Washington Post," and "The Evening Star" once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] JOB BARNARD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 32-3t

##### SECOND INSERTION.

**Thos. Walker, Attorney**  
In the Supreme Court of the District of Columbia.  
In re Estate of John Johnson, Deceased.  
Admr. No. 12,782.

Upon consideration of the report of Walter G. Bradley, executor, filed herein, it is, this 31st day of July, A. D. 1906, adjudged, ordered, and decreed by the court that the sale thereby reported of the following-described real estate, situate in the county of Washington, in the District of Columbia, and known as the west half (½) of the east half (½) of lot thirty-two (32) in block eighteen of the Howard University subdivision of the farm of John A. Smith, known as "Edingham Place," the same fronting twelve and one-half (12½) feet on V street N. W. (formerly Wilson street N. W.) by the depth of one hundred and fifty (150) feet, being premises No. 345 V (formerly Wilson) street N. W., to Furman J. Shadd, for five hundred and fifty (\$550.00) dollars, be ratified and confirmed, unless cause to the contrary be shown on or before the 3d day of September, A. D. 1906. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said last mentioned date.

[Seal] By the Court: ASHLEY M. GOULD, Justice.  
A true copy. Attest: James Tanner, Register of Wills. 31-3t

**Legal Notices.****Frederick S. Tyler, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Benjamin Franklin Whiteside, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 27th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of July, 1906. EDWARD W. WHITESIDE, 1921 Pa. ave. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,830. Administration. [Seal.] 81-8t

**Lyon & Lyon, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Max Goldsmith, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 27th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 31st day of July, 1906. ELLEN GOLDSMITH, CHAS. A. GOLDSMITH, 1910 Calvert st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,824. Adm'n. [Seal.] 81-8t

**Alexander H. Bell, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Chas. E. Roberts, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of July, 1906. MARY E. ROBERTS, 680 7th st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,808. Administration. [Seal.] 81-8t

**J. J. Darlington, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of V. Baldwin Johnson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 31st day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of July, 1906. MARGARITA JOHNSON, 1201 Q. st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,841. Administration. [Seal.] 81-8t

[Filed July 30, 1906. J. R. Young, Clerk.]

**Robert E. Mattingly, Attorney  
In the Supreme Court of the District of Columbia,  
Holding Equity Court.  
Mildred M. Posey, Complainant, v. Charles F. Posey,  
Defendant.  
Equity, No. 26,167.**

The object of this suit is to require the defendant to provide suitable maintenance for the support of the complainant, his wife, and on motion of complainant, by Robert E. Mattingly, her solicitor, it is, this 30th day of July, A. D. 1906, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order. Provided this order be published in The Washington Times, The Washington Post, and in The Washington Law Reporter once a week for three successive weeks. By the Court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 81-8t

**Legal Notices.****Richard Curtin, C. W. Darr, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Mary A. Lyons, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 31st day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of July, 1906. MARGARET CURTIN, 656 Mass. ave. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,798. Administration. [Seal.] 81-8t

**Raymond B. Diekey, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Thomas A. Mayes, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 27th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 27th day of July, 1906. WILLIAM W. GORDON, Stanhope Apt., New Jersey ave.; JACOB W. COLLINS, 63 Bryant ave. N. W.; MORSE O. MAYES, 1016 7th st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,822. Administration. [Seal.] 81-8t

**William Stone Abert, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Walter T. Wardell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of August, 1906. WILLIAM STONE ABERT, 408 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,725. Administration. [Seal.] 81-8t

**C. W. Darr, R. Curtin, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Annie Collins, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of July, 1906. THOMAS J. SAFFELL, 108 Seaton Place N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,832. Administration. [Seal.] 81-8t

**In the Supreme Court of the District of Columbia.  
Robert A. Phillips v. William B. Osborne.  
Equity, No. 26,063.**

This cause coming on to be heard upon the report of sale by R. Henry Phillips, trustee, filed in this cause on the 23d day of July, 1906, and the same having been duly considered by the court, it is, this 1st day of August, 1906, ordered that the sale mentioned in said trustee's report be, and the same is hereby, confirmed and ratified unless cause shall be shown to the contrary on or before the 4th day of September, 1906, at 10 o'clock A. M. Provided a copy of this order be published once a week for three weeks before said day in The Washington Law Reporter and The Washington Times. [Seal] JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 81-8t

**Legal Notices.**

**Irving Williamson, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Elizabeth Behrens Kenny, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Tuesday, the 28th day of August, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 27th day of July, 1906. JOHN W. PILLING, Executor, by Irving Williamson, Attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,832. Administration. [Seal.] 31-St

**THIRD INSERTION.**

**Geo. E. Fleming, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Jacob F. Raub, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 29th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of July, 1906. LUTHER F. SPIER, 722 North Carolina ave. S. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court No. 13,008. Administration. [Seal.] 30-St

**Henry S. Matthews, Solicitor**

**In the Supreme Court of the District of Columbia.**  
**William King et al., Complainants, v. Mary Elizabeth Oxley, Defendant.** In Equity, No. 26,054. Doc. No. —.

Upon consideration of the report of Henry S. Matthews, trustee, of the sale made by him of parts of lots numbered 63 and 64 in square numbered 1190 in that part of the city of Washington and District of Columbia formerly known as "Georgetown," beginning for the same at a point on the east line of 31st street northwest, distant 39 25-100 feet south from the intersection of the dividing line between said lots 63 and 64 with the east line of 31st street, and running thence north with said east line of said street, for a front 56 33-100 feet, and extending back east and of the width of said front, to the east line of a private alley in the rear of said premises, subject, however, to such rights as owners of property abutting on said alley may have over said alley, for the sum of twenty-two hundred and fifty dollars. It is, by the court, this 26th day of July, A. D. 1906, ordered, that said sale be, and the same is hereby, approved, ratified and confirmed, unless cause to the contrary be shown within thirty days from the date hereof. Provided a copy of this order be published for three successive

[Seal] weeks in the Washington Law Reporter within the said thirty days. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 30-St

**T. Percy Myers, Attorney**

**In the Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Frank G. Hanvey, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Tuesday, the 28th day of August, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 23d day of July, 1906. WALTER H. ACKER, Administrator, by T. Percy Myers, Attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,063. Admn. [Seal.] 30-St

**Legal Notices.**

**Maurice Kelly, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Daniel Paul McCartney, Deceased.**  
 No. 11,276. Administration Docket 30.

Application having been made herein for probate of the last will and testament and codicil thereto of said deceased, and for letters testamentary on said estate, by Mary Virginia McCartney and William Nelson Cronwell, the executors named in said will and codicil, it is ordered this 20th day of July, A. D. 1906, that Mary J. McCartney, otherwise known as Mary McCartney, James Garvey, Thomas Garvey, Mary W. McCaffery, Harry Francis Garvey, William Edward Garvey, Florence Rebecca Garvey, and Ethel Loretta Garvey, and any and all the next of kin and heirs at law of Daniel Paul McCartney, and all others concerned, appear in said court on Monday, the 27th day of August, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 30-St

**James F. Hood, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary E. Hood, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 18th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 24th day of July, 1906. JAMES F. HOOD, N. W. cor. 15th st., Pa. ave. N. W.; EVERETT J. DALLAS, The Baltimore, Wash. D. C. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,697. Administration. [Seal.] 30-St

**L. Cabell Williamson, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Sarah Janette Fenicks, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of July, 1906. L. CABELL WILLIAMSON, 458 La. Ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,799. Administration. [Seal.] 30-St

**John Paul Earnest, Solicitor**

**In the Supreme Court of the District of Columbia.**  
**Champe B. Thornton et al. v. Jennie T. Powers et al.** Equity, No. 21,956.

Upon consideration of the report of John P. Earnest, trustee, filed herein, it is, this 24th day of July, A. D. 1906, ordered that said trustee be authorized to accept the offer of Robert M. Gray to purchase, at private sale, for \$2,202.15, lots 4, 5, 6, and 7, in block 5, of the lots decreed to be sold in the above-entitled cause; and, further, that said sale of said lots be ratified and confirmed, unless cause to the contrary be shown on or before the 25th day of August, A. D. 1906. Provided a copy of this order be published in The Washington Law Reporter, The Washington Post, and The Evening Star, once

[Seal] a week for three successive weeks before said date. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 30-St

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W.

**Legal Notices.**

**C. W. Stetson, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary E. Shields, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23th day of July, 1906. JANE S. ELLIOTT, 2158 Florida Ave. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,744. Administration. [Seal.] 30-3t

**W. H. Linkins, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**Elizabeth T. Wilson, Complainant, v. William Waugh et al., Defendants. Equity, No. 26,845.**

The object of this suit is to declare the title of the complainant to the south twenty-six (26) feet one (1) inch front by the full depth of original lot six (6) in square one hundred and twenty-two (122) to be good of record in her, in fee simple, by reason of adverse possession. On motion of complainant by her solicitor, Wm. H. Linkins, it is, by the court this 25th day of July, 1906, ordered that the defendants, William Waugh, Eliza Waugh, and the unknown heirs of A. Fisher, and Ezra Varden, if the said named parties be living, and if dead, their or either of their unknown heirs, devisees, grantees, and alienees, both immediate and mediate, and the unknown heirs of such devisees, grantees, and alienees, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided this order be published once a week for three successive weeks in The Washington Law Reporter, The Washington Post and The Washington Times, before said return day, the first publications to be on the twenty-seventh day of July, 1906, and does not read as originally passed. By [Seal] the Court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 30-4t

**John A. Butler, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Rose E. Riley v. A. Ada Burke et al.**  
**Equity, No. 26,174.**

Upon consideration of the report of John A. Butler, trustee, filed herein, stating that he has sold part of lot 15, square 534, and described in the bill of complaint filed herein, to Wiegand and Wilson, for the sum of twenty-seven hundred and five (\$2,705) dollars, it is, this 24th day of July, A. D. 1906, adjudged, ordered, and decreed that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 24th day of August, A. D. 1906. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks prior to said return day. ASHLEY M. GOULD, True copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 30-3t

**James Rudolph Garfield, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Sarah R. Colgate, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 23d day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 25th day of July, 1906. JAMES RUDOLPH GARFIELD, STEPHEN G. REMINGTON. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,417. Admn. [Seal.] 30-3t

Justice blanks of every description for sale at this office.

**Legal Notices.****FOURTH INSERTION.**

**Hamilton, Colbert & Hamilton, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Adrian E. Cox, v. Burton Clark et al. Equity No. 26,261.**  
 The object of this suit is to declare the title of the complainant to the real estate situated in the city of Washington, District of Columbia, known as lots numbered twenty-two (22) and twenty-three (23) according to the subdivision made by Alfred Richards of lots in square numbered seven hundred and three (703) as said subdivision appears of record in the office of the surveyor of the District of Columbia, in book 20 at page 154, to be good in fee simple by reason of adverse possession, and to declare the title of complainant to be good in him of record and to perpetually enjoin the defendants from asserting any title to said real estate. On motion of the complainants, by his solicitors, Hamilton, Colbert & Hamilton, it is, by the court, this 16th day of July, A. D. 1906, ordered that the defendants, Burton Clark, Peter Campbell, William Claggett, John Mason, otherwise known as John Watson, Charles Lyons, and the unknown heirs, alienees, and devisees of said Clark, Campbell, Claggett, Mason, otherwise called Watson, and Lyons, cause their appearance to be entered herein on or before the first rule day occurring after the fortieth day exclusive of Sundays and legal holidays after the date of the first publication of this order, otherwise this cause will be proceeded with as in case of default. The court is satisfied upon good cause shown, as appears by the affidavit filed herein, that it is not necessary that this order should be published at least twice a month during the period of not less than three months. This order shall be published at least once a week for four successive weeks before said return day, provided that said order shall be published twice a month in the month of July, 1906, and twice a month in the month of August, 1906. This order shall be published in The Washington Law Reporter, the court not deeming it necessary that the same should be published in any other paper, and no other papers having been selected by the parties. [Seal] WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. July 20-27; aug 3-10

**SIXTH INSERTION.**

**Edwin S. Bailey, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Edwin W. Spalding, Complainant, v. The Unknown Heirs of Clark Hamil, Deceased Defendants.**  
**Equity No. 26,047. Doc. 58.**  
 The object of this suit is to declare title in Edwin W. Spalding to duplicate bounty warrant No. 56,276, the original of which was issued to Clark Hamil on the 14th day of February, 1857, under act of Congress of March 2, 1855. On motion of complainant, it is, this 25th day of May, A. D. 1906, ordered that the defendants, the unknown heirs, next of kin, legatees, or devisees of Clark Hamil, deceased, cause their appearance to be entered herein on or before the first rule day occurring three months after the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for the period of three months in The Washington Law Reporter and The Washington Post. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. June 18; July 8, 18; aug 3, 10

**SEVENTH INSERTION.**

**J. J. Darlington and W. C. Sullivan, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Jas. Martin v. Jeremiah Boothe et al. No. 26,260. Equity.**  
**ORDER.**  
 The object of this suit is to perfect complainant's title to lot 6, in square east of square 664, Washington, D. C. On motion of the complainant, it is, this 6th day of June, A. D. 1906, ordered that the defendant, Jeremiah Boothe, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs, devisees, and alienees of Nathaniel Walker Appleton, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published for three months, once a week for three successive weeks during the first month, and twice a month during each of the two succeeding months in The Washington Law Reporter and The Washington Times. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. July 8, 15, 22, July 18, aug 10

# The Washington Law Reporter

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### The Proviso to the Act of June 25, 1906, Relating to Publications Construed.

An important decision was rendered by Mr. Justice Barnard on August 14, 1906, involving the construction of the proviso to the recent act of Congress of June 25, 1906, amending sections 713 and 714 of the Code, relating to savings banks. The entire act was printed in our issue of August 3, and the proviso under consideration is in the following words: "And provided further, that all publications authorized or required by said section 5211 of the Revised Statutes, and all other publications authorized or required by existing law to be made in the District of Columbia, shall be printed in two or more daily newspapers of general circulation published in the city of Washington, one of which shall be a morning newspaper."

In the case of Conroy v. Unknown Heirs, etc., of Charles Carroll, Jr., a suit to quiet title by adverse possession, the complainant asked for an order of publication against the absent defendants which by its terms limited the publication to The Washington Law Reporter and The Washington Times. On behalf of The Washington Post it was contended that under the foregoing proviso to the act of June 25, 1906, all notices were required to be printed in that

paper, it being the only morning newspaper of general circulation published in the city of Washington. The question was argued by Mr. Nathaniel Wilson for The Post, and by Mr. George Francis Williams and Mr. Charles F. Benjamin for the complainant. The opinion of Mr. Justice Barnard, reported in this issue, denies the contention advanced on behalf of the Post. The proviso in question is construed not to have the effect of amending or repealing the various sections of the Code providing for the business of the courts or for the publication of judicial notices authorized by such sections or by the general practice or rules of the courts. The act in question amends sections 713 and 714 of the Code, relating to savings banks, and it is held that this proviso makes applicable to such banking institutions all the rules providing for publication as to their condition and action, so as to place them in the same category as national banks, and to require in addition or in lieu of the publications heretofore made by such institutions the publications required by said act. It is further held that the general words in said proviso, "all other publications authorized or required by existing law," etc., are, by a fair construction, confined to publications heretofore required by the laws of the District to be made by such banking institutions.

WE ARE indebted to the courtesy of the secretary of the American Bar Association for a copy of the printed report of the proceedings of the twenty-eighth annual meeting of that association, held at Narragansett Pier, R. I., August 23-25, 1905. It is a handsome volume of 968 pages, uniform in style, with the previous reports issued by the association, and its contents make it a valuable addition to a law library. The annual address by Hon. Alfred Hemenway, of Boston, on "The American Lawyer," is a splendid tribute to the profession by one of its most distinguished members.

As heretofore announced, the twenty-ninth annual meeting of the association will be held at St. Paul, Minn., August 29-31, 1906. In connection therewith will occur the meetings of the Section on Legal Education; the Section of Patent, Trade-Mark, and Copyright Law; the Association of American Law Schools, and the Commissioners on Uniform State Laws. The president of the association for the year now closing is Hon. George R. Peck, of Chicago, whose address on "The March of the Constitution," delivered at the meeting in 1900, has been so widely read and with profit.

## Court of Appeals of the District of Columbia.

FRANCIS WINSLOW, ET AL., APPELLANTS,  
v.  
THE BALTIMORE AND OHIO RAILROAD  
COMPANY.

## CONDEMNATION PROCEEDINGS; APPEALS; ESTOPPEL.

1. A proceeding by a railroad company to condemn land and to determine the compensation to be made for it, is a suit at common law when initiated in a court.
2. Under the general appellate jurisdiction conferred upon this court by section 226, Code D. C., an appeal lies to this court from a final order of the Supreme Court of this District, sitting as a District Court of the United States, in a proceeding by a railroad company to condemn land and determine the compensation to be made for it, notwithstanding the acts of Congress pursuant to which such proceeding is instituted do not specifically provide for such appeal.
3. A proceeding was instituted by the B. & O. Railroad Co., pursuant to authority given by certain acts of Congress, to condemn part of a tract containing ninety acres, belonging to appellants—part of the land sought to be condemned being for purposes of a right of way and part to be used in relocating and straightening a road on which appellants' land abutted. The portion of the tract sought to be acquired was specifically described in the instrument of appropriation. Appellants in their answers resisted the proceedings on the ground that the railroad company was compellable under the law to take the entire tract and could not limit the proceedings to the part described. The commissioners appraised the land sought to be acquired, as described in the instrument of appropriation, at \$35,392.50 and the damage to the residue at \$10,000. No written exceptions to the award were filed, and the appellee paid the amount into court. The award was confirmed, and on appellants' motion the \$35,392.50 was paid over to them and the \$10,000 invested to abide the further order of the court. Thereafter appellants noted an appeal from so much of the decree confirming the award as failed to require the railroad company to acquire the entire tract and as permitted it to limit its acquisition to the portion described in the instrument of appropriation. Held—
  - (1) Whether appellants might disregard the requirement of the statute, that written exceptions be filed in ten days after the filing of the award, quære; but, assuming that appellants, intending to submit a question of law for the decision of this court, may omit this procedure,
  - (2) That appellants, by the acceptance of the \$35,392.50, awarded by the jury as the value of the land described in the instrument of appropriation, are estopped from appealing in respect of the land taken and the legality of such taking, both with respect to that taken for the right of way and that taken for the relocation of the road on which appellants' land abutted and which was crossed by the tracks of the railroad company.
  - (3) That the order appealed from should be affirmed for the further reason that the appeal was not from that final order, but from the omission therefrom of things extraneous and irrelevant to the proceeding and as such no part of the decree.
4. The provision of the act of February 23, 1903, that no street or avenue shall be closed until the property abutting thereon, or the portions thereof provided to be closed, shall have been acquired by said railroad company, etc., read in connection with section 1 of the act of February 12, 1901, held intended to apply to streets within the city of Washington, and not to country roads whereby the railroad would be compelled to acquire farms on both sides for which, as in the present case, the company as a common carrier would have no use.

No. 1570. Decided June 13, 1906.

APPEAL by respondents from an order of the Supreme Court of the District of Columbia, holding a District Court, District Court No. 626, confirming an award by Commissioners in condemnation proceedings. Affirmed.

Mr. Wm. G. Johnson for the appellants.

Mr. George E. Hamilton and Mr. M. J. Colbert for the appellee.

Mr. Justice McCOMAS delivered the opinion of the Court:

This case has had careful consideration, upon a motion to dismiss the appeal, and upon its merits, and again upon a motion for a rehearing. It is an appeal from a final order of the Supreme Court of the District of Columbia, holding a District Court of the United States, in a proceeding in condemnation instituted in that court by the Baltimore and Ohio Railroad Company, the appellee, the instrument of appropriation filed in said District Court having for its object the acquisition, by condemnation to its use, of a part of a tract of land in the District of Columbia, called Younsborough, known as the Patterson estate, belonging to Francis Winslow and others, appellants.

The Commissioners in their report awarded the appellants \$45,392.50, appraising the value of the strip of land sought to be acquired by the appellee at \$35,392.50, and awarding \$10,000 for the injury and damage to the remaining part of the Patterson tract. The part of the Patterson tract taken by the appellee is .625 part of an acre, situated at the intersection of Florida avenue, Delaware avenue, and Brentwood road, and is the southeast corner of a farm containing about ninety acres. In addition to land described as a tract to be used for right of way purposes, a strip of land fifty feet wide east of and immediately adjoining the land to be used for right of way purposes, and extending from the east line of the Brentwood road to the north line of Florida avenue, was taken, this last parcel to be used for relocating and straightening the Brentwood road.

The appellants resisted the proceedings on the ground that the appellee was compellable under the law to take the entire tract and could not limit the proceedings to the taking of the portion described in the instrument of appropriation. The appellees paid into the registry of the court the full amount awarded by the appraisers. The award of the appraisers was confirmed by a final order of the court below, and on April 20, 1905, on the appellants' motion, said court ordered the clerk to pay over to the appellants the sum of \$35,392.50, the amount awarded for the land taken. The remaining \$10,000, at the instance of appellants, was invested to abide the further order of the court.

1. On April 27, 1905, the appellants noted an appeal to this court, from so much of the decree of April 20, 1905, confirming the return and award of the appraisers herein as fails to require the petitioner, the Baltimore and Ohio Railroad Company, to acquire the entire tract of land described in the answer of the respondents herein, and as permits the said petitioner to limit its acquisition to the portion of the said land described in the petition or instrument of appropriation.

The appellee filed a motion to dismiss this appeal. For convenience, this motion and the case made by the record were heard together.

Three reasons are urged for dismissing the appeal: 1st. That the appellants did not file within ten days after the award written exceptions thereto, nor at any time file exceptions to said award. 2d. That no appeal to this court



was provided for in the act of Congress under which these proceedings were instituted. 3d. That by accepting the sum of \$35,392.50, part of the award, the appellants lost their right to appeal if they had any.

"An act to provide for a Union Railroad Station in the District of Columbia, and for other purposes," approved February 28, 1903 (32 Stat., 909), supplemented two acts of Congress approved February 12, 1901; the one "an act to provide for eliminating certain grade crossings of railroads in the District of Columbia and to require and authorize the construction of new terminals and tracks for the Baltimore and Ohio Railroad Company in the city of Washington, and for other purposes" (31 Stat., 775); the other, "an act to provide for eliminating certain grade crossings on the line of the Baltimore and Potomac Railroad Company in the city of Washington, and require said company to depress and elevate its tracks, and to enable it to relocate parts of its railroad therein, and for other purposes" (31 Stat., 767).

The two earlier acts intended to eliminate grade crossings in the Capital and to secure in the one case a better railway station and in the other a better location of a new and better railway station. The latest act wisely supplemented this purpose by requiring the two roads to construct and maintain an adequate Union Railroad Station at a convenient location fixed by the act, the station to be a joint construction; and Congress also provided for the creation of a terminal company in aid of this extensive project for improving the Capital, fixed the routes of connection of the two railroads, the location of freight yards to subserve the public interest, required certain forms of construction, and in aid of the broad and comprehensive plan, directed that streets and avenues be closed and that others be opened, and exercised its sovereign powers over the Federal District to grant rights of way and a spacious location of a Union Station and of yards, and utilized the modes of condemnation of lands and of opening and closing streets heretofore given by it to the municipal government of the District of Columbia.

In section 9 of the act of February 28, 1903, Congress provided:

"SEC. 9. That in the execution of the powers conferred by this act, or by either of said before-mentioned acts, approved February twelfth, nineteen hundred and one, by the terminal company, the Philadelphia, Baltimore and Washington Railroad Company, or the Baltimore and Ohio Railroad Company, each of said companies may acquire, by purchase or condemnation, the lands and property necessary for all and every the purposes contemplated by each of said last-mentioned acts and this act respectively; and such condemnation shall be effected in the manner and by the methods and processes provided by sections six hundred and forty-eight to six hundred and sixty-three, both inclusive, of the Revised Statutes relating to the District of Columbia, which said sections, despite any repeal thereof, are hereby continued in full force and effect, and, for the purposes contemplated by this section, are hereby specially enacted with like effect as if the same were incorporated herein at length: *Provided,*

That in every case wherein an assessment of damages or an award shall have been returned by the appraisers the company, upon paying into court the amount so assessed or awarded, may enter upon and take possession of the land and property covered thereby, irrespective of whether exceptions to said assessment or award shall be filed or not, and the subsequent proceeding shall not interfere with or affect such possession, but shall only affect the amount of compensation to be paid."

The section just quoted, for such condemnations, reenacts sections 648 to 663, both inclusive, of the Revised Statutes of the District of Columbia. But section 10 of the act of February 12, 1901 (Public No. 50) provides:

"SEC. 10. That if for the purpose of constructing and owning the terminals, viaduct, railroads, depots, stations, and other works authorized by this act, or any part thereof, The Baltimore and Ohio Railroad Company shall deem it expedient or advisable that a terminal company in its interest be created and organized in the District of Columbia, the said Baltimore and Ohio Railroad Company, or some person thereto authorized on its behalf by resolution of its president and directors, together with other persons not less than seven in number, of whom a majority shall be residents of the District of Columbia, shall cause a certificate of incorporation to be executed and recorded in accordance with the provisions of the general incorporation act of Congress for the District of Columbia relating to railroad companies, *being sections six hundred and eighteen to six hundred and seventy-six, both inclusive, of the Revised Statutes relating to the District of Columbia*, with such capital stock, not to exceed five million dollars fully paid up, and under such corporate name as may be set forth in such certificate. *The corporation so formed shall be vested with all the authority, rights, and privileges granted by said general act.* . . . Said corporation shall also be vested with and enjoy all the authorities, rights, and privileges herein granted, so far as the same are applicable to or exercisable in its undertaking, as set forth in its said certificate of incorporation, and it shall be bound by all the limitations and provisions of this act."

Section 8 of the act of February 28, 1903, enacts that "except as modified by this act all the provisions of said act relating to the Baltimore and Ohio Railroad Company, approved February 12, 1901, shall be and remain in full force and effect." The appellants insisted that because section 9, of the act of February 28, 1903, provides the power and manner of condemnation for the terminal company and for each of the railroad companies, or by one acting for all, that the railroad companies derived no right or authority under sections 656 and 647 of the Revised Statutes, D. C. There was no terminal company, and the appellee was, therefore, by section 10 of the act of February 12, 1901, given the aid of Revised Statutes, D. C., sections 618 to 676, both inclusive. In our opinion, the appellee has, therefore, such right and authority under sections 646 and 647 given it in section 10 of the said act of 1901. We observe also that section 11 of the act of 1901, and section 9 of the act of 1903, contain like provisions

for the acquisition and condemnation of lands and like inclusion of said section 648 to 663, both inclusive, of the Revised Statutes of the District. If this condemnation had proceeded under the act of 1901, these companies unquestionably would have had the rights and authority contained in sections 646 and 647, and in the present proceeding, from the matters before stated, we repeat, the appellee was given such rights and authority as are contained in the two last-mentioned sections of said Revised Statutes.

Section 646 empowers a railroad whose tracks shall cross a highway where an embankment shall make a change in the line of such highway to take additional lands for the construction of such highway, and section 647 provides for the condemnation of such additional land and that the same shall become part of such highway and held for highway purposes. Accordingly, in the proceeding of condemnation we are here considering, a triangular piece of land was taken, part for the railway and part to relocate and straighten Brentwood road from New York avenue to Florida avenue, thus affording a roadway fifty feet wide. The instrument of appropriation asked for the acquisition by condemnation of this triangular piece of land, .625 of an acre, being the corner of the Patterson farm bounded by Brentwood road and Florida avenue. The total award of the Commissioners, by their report filed November 21, 1904, was, as we have said, \$45,392.50, all of which was the appraised value of this land, except \$10,000, which was awarded as damages to the rest of the Patterson farm. The appellants filed no exception to such award, which was confirmed April 20, 1905, and on April 27, 1905, the appellants filed their notice of appeal to this court.

2. By sections 650 and 654, Revised Statutes, D. C., made part of the act of February 28, 1903, such condemnation proceedings were to be taken and carried on in the Supreme Court of the District and the only appeal from the Commissioners' award in condemnation provided is in section 658, Revised Statutes, D. C.:

"SEC. 658. The award of the arbitrators may be reviewed by the court, in which such proceedings may be had, on written exceptions filed by either party, in the clerk's office, within ten days after the filing of such award, and the court shall take such order therein as right and justice may require, by ordering a new appraisal, on good cause shown."

Section 659 provides that "the subsequent proceedings on the appeal shall only affect the amount of compensation to be allowed." The first proviso to section 9 of the Union Station act states that the company, after paying into court the money awarded, may take possession of the land covered thereby, and the subsequent proceedings "shall only affect the amount of compensation to be paid."

Thus Congress in these successive railroad and Union Station acts provided for the condemnation of land and for a special appeal from the award of the appraisers, Congress confined the proceedings to the Supreme Court of the District and limited the appeal for review in this case to the same court in which these proceedings were had, and Congress further limited the scope of the appeal so that the subse-

quent proceedings on the appeal should only affect the amount of compensation.

In proceedings for condemnation of lands for public use, the proceedings are either carried on under the supervision of a court of general jurisdiction or usually an appeal is provided to such a court. The courts of many States hold that there can be no appeal unless granted by statute. In this case, the sections 658 and 659, Revised Statutes, D. C., just quoted, grant the only appeal afforded by these acts of Congress.

The appellants here did not file any written exceptions within ten days because the appeal would only affect the amount of compensation, and the appellants were satisfied with the compensation for the *land taken*, and the appellants object was upon the appeal to raise the question of the obligation of the appellee to *condemn land not taken*. The appellants insist that if the judgment of the court in this case upon a question of law submitted to it for a decision can be reviewed at all, it must be by appeal to this court from the judgment complained of under its general jurisdiction and not by appeal to the court below by exceptions to the amount of the award of the appraisers which is not here complained of. The appellants admit that there is no provision in the relevant act of February 12, 1901 (31 Stat. 780), but insist that section 11 of that act authorizes and empowers the appellee to acquire lands by condemnation as provided in section 648 to 663, both inclusive, of the Revised Statutes relating to the District of Columbia, and that section 11 contemplates a judicial proceeding in the Supreme Court of the District of Columbia, and under existing laws any final judgment of the Supreme Court of the District was subject to be reviewed on appeal to this court.

The appellants insist that the Code of this District provides for special terms of the Supreme Court of the District of Columbia and for special terms of the District Court of the United States, and confers on the latter court jurisdiction of all proceedings instituted in the exercise of the right of eminent domain; and that by section 226 of the Code "any party aggrieved by any final order, judgment, or decree of the Supreme Court of the District of Columbia, or of any justice thereof, . . . may appeal therefrom to the said Court of Appeals." The jurisdiction of the special term of the Supreme Court of this District holding a District Court of the United States, was invoked and exercised in this case, and the final order or decree here appealed from was passed. The appellant contends that the words of section 226 conferring appellate jurisdiction on this court are ample to include this appeal from this final order or decree in a proceeding for the condemnation of land.

The two acts of 1901, and the act of 1903, last mentioned, are not intended to disturb the existing judicial system of this District, nor the jurisdiction of this court to review an order, judgment, or decree of the Supreme Court of this District as heretofore.

The summary proceedings for the condemnation of land are statutory exercises of the power of eminent domain in cases where the ordinary processes of law would seem to be inadequate and even inappropriate and where such a stat-

ute gives a limited appeal by a special mode it would apparently negative the right to appeal in any other manner. The court below had the power and jurisdiction to affirm the award in this case. It would appear the intent of Congress is that such action should not be reviewed in this court, and that if the judgment of the court below was rendered within the limits of the special jurisdiction conferred upon it, it was not only binding but final.

Very many of the courts of last resort in the States where the right of appeal from the lower court is given in terms substantially the same as is given in section 226 of the Code of this District, hold that such railroad companies having the authority to condemn, and the lower court, usually the Circuit Court, having exclusive and final jurisdiction over the subject-matter, the Appellate Court has no jurisdiction to review any of the questions presented by the record because the judgment of the court below is conclusive and its control exclusive, and then when its determination was made the whole matter was finally concluded: That the jurisdiction conferred upon the lower court in these cases is a special statutory one and in respect of all matters within the scope of the jurisdiction its judgment is final and conclusive; that by such statutes there is no appeal expressly given to the Appellate Court, such statutes usually investing the lower court with the power of reviewing and confirming or setting aside inquisitions like the present; that from the nature and course of their proceeding this power of review is a fit subject for litigation in a Circuit Court but is wholly inappropriate to the jurisdiction of an Appellate Court. Among such cases, see *Moores v. Water Co.*, 79 Md., 397; *Brown v. Railroad Co.*, 58 Md., 544; *W. & S. R. R. Co. v. Condon*, 8 G. & J., 443; *Chappell v. Edmonson Avenue Co.*, 83 Md., 543; *In re D. H. Canal Co.*, 69 N. Y., 211; *N. Y. W. S. & B. R. Co.*, 94 N. Y., 290; *N. Y. & H. R. R. Co.*, 98 N. Y., 12.

We have carefully examined the question of the right of appeal and overrule the motion to dismiss this appeal upon the authority of the cases to which we now refer. In *Railroad v. Church*, 86 U. S., 62, where, not the Railroad Company, but the church instituted proceedings before the marshal and a jury of this District against the Railroad Company to recover from it damages which the church had sustained by reason of the road of the company having been run through a street in front of the church. The jury assessed the damages and the Supreme Court of this District confirmed the inquisition and a judgment was rendered that the church recover the sum named with costs. By writ of error the Railroad brought the case to the Supreme Court and the church moved to dismiss it for want of jurisdiction upon the ground: (1) That the proceeding is in its nature summary and special and is of that character in which the action of the court confirming or quashing the verdict of the jury is conclusive and admits of no appeal; (2) that the proceeding in such case is governed both before the jury and in the Supreme Court of the District by a statute of Maryland which by the uniform construction of the courts of that State does not allow an appeal or writ of error to any

other court; but the court said: "It is certainly true that the proceeding is of the character asserted in the propositions on which the want of jurisdiction is based, and that, as a general rule, no appeal or writ of error lies in this class of cases.

"But the appellate jurisdiction of this court over the doings of the Supreme Court of the District is established and regulated by act of Congress, and a reference to the statute on this subject is necessary to the decision of the question before us. The act which created the Supreme Court of the District of Columbia vested in it the same powers and jurisdiction that had previously belonged the Circuit Court, which is superseded, and the appellate power of this court was declared to be the same as that which it had, by law, over the Circuit Court. The act of February 27, 1801, organizing the Circuit Court declares that any final judgment, order, or decree in said Circuit Court, where the matter in dispute, exclusive of costs, shall exceed the value of one hundred dollars, may be re-examined and reversed or affirmed in the Supreme Court of the United States by writ of error or appeal, and though the sum limiting this jurisdiction has been increased to \$1,000, this statute remains the sole rule governing the right of appeal in all other respects.

"We are of opinion that both the questions raised by the motion to dismiss have been explicitly decided by this court. In the case of *Custiss v. Turnpike Co.*, 6 Cranch, 233, an assessment for land taken for use of the company was quashed by the Circuit Court, and a writ of error was sued out by Custiss from this court. A motion was made to dismiss this writ on the same ground taken in the present case, namely, want of jurisdiction; to which Marshall, C. J., replied, that 'at the opening of the case some doubt was entertained as to the jurisdiction of the Supreme Court; but that doubt is removed by an inspection of the act by which the Circuit Court of the District of Columbia is constituted. The words of that act, descriptive of the appellate jurisdiction of this court, are more ample than those employed in the judicial act.' He then quotes them as we have given them above.

"But perhaps the most conclusive case in this branch of the discussion, namely, the proposition that the statute of Maryland governs the right of appeal in the present case, because by the act of Congress it is adopted as the mode of proceeding in assessing damages and in defining the power of the Supreme Court of the District, in the matter, is that of *Carter's Heirs v. Cutting*, 8 Cranch, 251. That was a case in which an order of the Orphans' Court of Alexandria County, being affirmed in the Circuit Court, an appeal was taken to this court, and a motion was made to dismiss that appeal. This motion was based upon the twelfth section of the same act of February 27, 1801, by which it was declared that the Circuit Court, in appeals from the Orphans' Court, shall therein have all the power of the chancellor of the State of Maryland; and by the laws of Maryland the decree of the chancellor in such case was final.

"It will be observed that the analogy between that case and the present is perfect. But the court said in that case that the conclusiveness of the sentence formed no part of the essence of the

powers of the court. Its powers to act are as ample, independent of their final quality, as with it. And referring to the language so often cited already, they say: 'We can not admit that construction to be a sound one which seeks by remote inferences to withdraw a case from the general provisions of a statute which is clearly within its words and perfectly consistent with its intent.'

"We do not feel at liberty to disregard these contemporaneous expositions of an act of Congress which has furnished the criterion of our jurisdiction ever since the courts of the District were established, and they are so directly in point that we can not dismiss the writ without overruling them. The motion is, therefore, denied." *Railroad v. Church*, supra, 63, 64, 65.

In *Ormsby v. Webb*, 134 U. S., 47, 61, where the Supreme Court was discussing its jurisdiction to reexamine the final judgment or decree of the Supreme Court of this District, the court repeated the language of Chief Justice Marshall in the *Custiss* case and added: "In *Railroad Co. v. Church*, 19 Wall., 62, the jurisdiction of this court to reexamine the final order of the Supreme Court of this District confirming an inquisition of damages returned therein, and which was instituted before the marshal and a jury of the District, was sustained. The court said that its powers to review the judgments and final orders, of the Supreme Court of the District was as ample as its power over the final judgments, orders, and decrees of the Circuit Court which it superseded. These two adjudications illustrate to some extent, the nature of the cases from the courts of this District which may be reexamined here, and show that the question now before us is to be determined by the acts of Congress defining the relation between the court and the highest court of this District, and not by reference to the statutes of Maryland, or to the statutes defining our jurisdiction to review the judgments of the Circuit Courts of the United States, held in the several States. And we may repeat here what Chief Justice Marshall said in *Young v. Bank of Alexandria*, 4 Cranch, 384, in which the main question was as to the power of this court to review the judgments of the Circuit Court of this District in a certain class of cases: 'The words of the act of Congress being as explicit as language can furnish must comprehend every case not completely excepted from them.'"

In *B. & P. R. R. Co. v. Trustees*, 91 U. S., 127, the Supreme Court of the District had confirmed an inquisition of damages by a marshal's jury and the railroad sued out a writ of error to the Supreme Court which took jurisdiction and affirmed the Supreme Court of the District which had confirmed the inquisition of damages.

In *Kohl et al. v. United States*, 91 U. S., 367, the court said:

"Doubtless Congress might have provided a mode of taking the land, and determining the compensation to be made, which would have been exclusive of all other modes. They might have prescribed in what tribunal or by what agents the taking and the ascertainment of the just compensation should be accomplished. The mode might have been by a commission, or it might have been referred expressly to the Circuit Court.

"The right of eminent domain always was a right at common law. It was not a right in equity, nor was it even the creature of a statute. The time of its exercise may have been prescribed by statute; but the right itself was superior to any statute. That it was not enforced through the agency of a jury is immaterial; for many civil as well as criminal proceedings at common law were without a jury. It is difficult, then, to see why a proceeding to take land in virtue of the Government's eminent domain, and determining the compensation to be made for it, is not, within the meaning of the statute, a suit at common law, *when initiated in a court.*" *Kohl et al. v. United States*, supra, 375, 376.

It is to be observed that the court was here speaking of an act of Congress under authority of which a suit for condemnation of land for a United States court house in Cincinnati had been instituted in the proper Circuit Court of the United States, and under the laws of Ohio it was regular to institute a joint proceeding against all the owners of lots proposed to be taken. See, also, *United States v. Jones*, 109 U. S., 513.

In *Chappelle v. United States*, 160 U. S., 489, 513, the condemnation proceeding instituted and concluded in a court of the United States was in substance and effect an action at law.

In *Searle v. School District*, 124 U. S., 197, 199, it was held that the proceeding authorized by the statute of Colorado for condemning land to public use for school purposes is a suit at law within the meaning of the constitution and the acts of Congress conferring jurisdiction upon the courts of the United States which may be removed into a Circuit Court of the United States from a State court.

In *Boom Co. v. Patterson*, 98 U. S., 403, 406, where Patterson had appealed in a condemnation proceeding to the State district court in Minnesota, and then as a citizen of Illinois obtained the removal of the case to the Circuit Court of the United States, where it was tried, speaking of the right of eminent domain, the Supreme Court said: "But notwithstanding the right is one that appertains to sovereignty, when the sovereign power attaches conditions to its exercise, the inquiry whether the conditions have been observed is a proper matter for judicial cognizance. If that inquiry take the form of a proceeding before the courts between parties—the owners of the land on the one side, and the company seeking the appropriation on the other—there is a controversy which is subject to the ordinary incidents of a civil suit, and its determination derogates in no respect from the sovereignty of the State.

"The proceeding in the present case before the commissioners appointed to appraise the land was in the nature of an inquest to ascertain its value, and not a suit at law in the ordinary sense of those terms. But when it was transferred to the District court by appeal from the award of the Commissioners, it took, under the statute of the State, the form of a suit at law, and was thenceforth subject to its ordinary rules and incidents."

See, also, *Monongahela Navigation Co. v. United States*, 148 U. S., 312, in which case of condemnation proceedings an appeal was taken

as provided by the statutes of Pennsylvania, which appeal gave the right to a trial de novo according to the course of the common law.

Without further discussion we conclude that these rulings of the Supreme Court instruct us that such a proceeding as this, to take land by condemnation and determining the compensation to be made for it, is a suit at common law when initiated in a court; that the jurisdiction of the special term of the Supreme Court of this District holding a District court of the United States, passed the final order or decree here appealed from, and that this court has the power and duty to review such order on appeal under the general jurisdiction conferred by section 226 of the Code.

3. In taking the present appeal it may be doubted whether the appellant may safely disregard the method prescribed by the statute for reviewing the award of the appraisers in the court below. The conditions imposed by statute must be complied with in order to secure the benefit of the appeal. *Lewis, Em. Dom.* (2d Ed.) sec. 537. Section 658, Revised Statutes. D. C., before quoted, requires that written exceptions should be filed within ten days after the filing of such award. Appellants' counsel admit that no such exceptions were filed and for the reason that under the succeeding section 659 it is declared that "subsequent proceedings on the appeal shall only affect the amount of compensation to be allowed," and the purpose of this appeal is not to disturb the amount of the appraisement for the *land taken*, but to determine the question of the obligation of the Company as to the *farm not taken*. We may assume, though we do not decide, that the appellants intending to submit a question of law for the decision of this court may omit this procedure required by law because they do not desire to except to the award of the appraisers upon a question of fact. The important part of the order or decree here is the ratification of the appraisement and award.

4. The appellants' counsel correctly say that the only question to be determined is whether the Baltimore and Ohio Railroad Company is compelled to acquire the entire Patterson tract of land as described in the answers of appellants, or whether it may limit its acquisition to a portion arbitrarily selected by itself. We observe that the latter alternative is the usual case of land condemnation. But the appellants' able counsel contends that the appellee is compelled to acquire the entire tract because (1) by the specific terms of the acts we here consider the portion of the Brentwood road upon which the land of the appellant abuts is required to be closed and vacated as a public road, and (2) by the specific terms of the statute it is made the duty of the railroad company as a condition to the closing of the road that it acquire all the property abutting on the road.

We have before quoted certain sections of these statutes whereunder the appellee in this proceeding procured the condemnation of the land, a part taken for the railroad and a part taken to straighten and widen Brentwood road where crossed by the railroad. It resulted that Brentwood road was not closed, and unless and until it was closed, even upon the appellants'

theory, the railroad could not be compelled to acquire the Patterson farm.

We need not consider here whether Congress made it mandatory that the Brentwood road shall be vacated, abandoned by the public and closed to its use. These appellants have accepted the \$35,392.50 awarded as compensation for all the lands taken from them, including the lands whereby Brentwood road was deflected, straightened, widened and continued in public use. The appellants are estopped in this proceeding from objecting in respect of the failure to close Brentwood road or the land condemned by the appellee for relocating Brentwood road. By accepting the amount last mentioned, the appellants can not thereafter appeal in respect of the land taken, nor of the use the appellee may make of it. The appellants by their note of appeal to this court have abandoned all questions save the one we stated. The appellants submitted to that part of the order of the court below concerning the land taken for the appellee's railway and for relocating the highway crossed by the railroad tracks when they accepted the amount awarded for the land which was taken, the fee to which is invested in the appellee by the order appealed from. The appellants contend that while submitting to this part of the order, they have a right to appeal from another part, where a reversal of the part appealed from, as appellants claim, would not affect rights under the portion submitted to. It is true that in *Embry v. Palmer*, 107 U. S., 3:

"It is said that this is a release of errors. Without entering upon a discussion of the general question, it is sufficient for the present purpose to say that no waiver or release of errors, operating as a bar to the further prosecution of an appeal or writ of error, can be implied, except from conduct which is inconsistent with a claim of a right to reverse the judgment or decree, which it is sought to bring into review. If the release is not expressed, it can arise only upon the principle of an estoppel. The present is not such a case. The amount awarded, paid, and accepted constitutes no part of what is in controversy. Its acceptance by the plaintiff in error can not be construed into an admission that the decree he seeks to reverse is not erroneous."

And in *Reynes v. Dumont*, 130 U. S., 354, 394, the court said:

"We are asked to dispose of the case adversely to appellants upon the ground that they received the remaining bonds and money after the liens decreed in Fry's favor were satisfied, but such receipt does not oust the jurisdiction. The acceptance by appellants of what was confessedly theirs can not be construed into an admission that the decree they seek to reverse was not erroneous."

And in *Gillfillan v. McKee*, 159 U. S., 303, 311, where McPherson claimed an interest in two funds, and was decreed an interest in one, but denied an interest in the other, and accepted that in his favor and appealed from that which was adverse, the court said:

"While the acceptance of a whole or a part of a particular amount awarded to a defendant might, perhaps, operate to estop him from insisting upon an appeal, there were practically two decrees in this case, one applicable to the

special fund, which, in the bill, the subsequent pleadings, and in the decree, had been kept as a distinct and separate matter, a portion of which fund was awarded to McPherson, and the other applicable to the general fund in which McPherson had been denied any participation whatever. Clearly his acceptance of a share in the special fund did not operate as a waiver of his appeal from the other part of the decree disposing of the general fund. There is nothing inconsistent in his action in accepting the amount awarded to him from the special fund, and appealing from the refusal of the court to award him the general fund."

The principle announced in these cases is clear. The difficulty arises in its application in this case. The instrument of appropriation, the basis of this proceeding, limits the acquisition to the specific parcel of land described therein, part for right of way and part for relocating Brentwood road. This triangular piece of land is the subject-matter of the condemnation proceeding. The answer of the appellants introduced other matters. The report of the appraisers was confined to the value of the land sought to be acquired by the appellee and to the injury and damage to the remaining part of the whole tract of land, and the final order appealed from ratified the appraisal and award returned by the appraisers which was confined to the land described in the instrument of appropriation for the said uses, and the court's order recited that the appellee had paid into the registry of the court the sum of \$45,392.50, the full amount of such appraisal and award, and the court further decreed that the fee in the land described in the petition and instrument of appropriation became vested in the appellee.

It appears to us that this proceeding was entire and not separable, that the matter litigated was a single matter, that the fund here was but one fund, and in our opinion the acceptance of the money received by the appellants should be held an estoppel upon their right of appeal. At least it estops appellants in this proceeding from appealing in respect of the land taken and the legality of such taking both for right of way and for relocating the highway crossed by the railway tracks.

5. The very terms of this appeal determines us to affirm the judgment of the learned court below. The appellant appealed to this court "from so much of the decree of April 20, 1905, confirming the return and award of the appraisers herein, as fails to require the petitioner, the Baltimore and Ohio Railroad Company to acquire the entire tract of land described in the answer of the respondents herein and as permits the said petitioner to limit its acquisition to the portion of the said land described in the petition or instrument of appropriation."

We find in this record no judgment other than the final order of the court confirming the award upon a proceeding under the petition for appropriation of the land taken. It is true that the answer of the appellants endeavors to raise these collateral questions, but the proceeding is only for the condemnation of the land specified and the just compensation therefor by the instrument of appropriation and the decree is confined to these two subjects.

This appeal is not from the final order or decree of this proceeding. It is avowedly an appeal from what is no part of the decree and which in such proceeding could not be a part of such final order. It is an appeal from the omission from such order of things extraneous and irrelevant in the proceeding. Had the final order failed to limit the appellee's acquisition to the land described in the instrument of appropriation it would have been our duty to reverse it. If there be any mode in which the appellants may seek to compel the appellee to acquire the whole farm, this is not such mode. We may go further. If the appellants were not here estopped. If Brentwood road had been closed, the appellants claim these statutes require the appellee in that state of case to condemn the whole of the Patterson farm. The appellants' conclusion is based upon—

"The provision of section 5 of the act of February 28, 1903, which covered the case of the closing of a street under any one of the three acts and which is as follows (32 Stat., 912):

"That no streets or avenues shall be closed or abandoned under the provisions of this act or of the acts relating to the Baltimore and Ohio Railroad Company and the Baltimore and Potomac Company, approved February twelfth, nineteen hundred and one, until all of the property abutting on the streets or avenues, or portions thereof, provided to be closed in said acts, shall have been acquired by said railroad company or companies or the terminal company referred to herein, either by condemnation or purchase, as hereinafter provided."

The provision just quoted must be considered in connection with section 1, of the act of February 12, 1901, which provides: "That no portion of any street shall be closed under authority of this act until said railroad company shall have secured control of the property abutting upon said portion to be closed, it being the intent hereof that no property owner shall be deprived of egress from or ingress to his property."

These two provisions of the two acts requiring the purchase or condemnation of property abutting upon streets or parts of streets, plainly applied to streets within the City of Washington, and to lots abutting upon such streets, and not to platted squares merely mapping the surface of farms. It was the intent of such provision to require the condemnation or purchase of property abutting upon streets in order that no property owner should be deprived of egress or ingress. These provisions authorizing the closing of open streets provide that streets shall not be closed until all the property on each side is acquired. Until the railroad shall acquire all the property, the streets remain open and the egress and ingress of the abutting owner is undisturbed. It is plain that these provisions do not apply to county roads whereby the railroad would be compelled to acquire farms on both sides. The Patterson farm of ninety acres, as appears by the plat in the record, abuts on Brentwood road from Florida avenue to New York avenue, on the former for several hundred feet, on the latter for several thousand feet, and by the intended relocation of Brentwood road near Florida avenue, its front on Brentwood road south of New York avenue is undisturbed.

Congress intended that designated streets should not be closed, unless and until the railroad acquired the abutting property. Congress was solicitous to guard the access of house and lot owners to their property and not to require the railroad to acquire farms.

"The use for which the land is to be taken having been determined to be a public use, the quantity which should be taken is a legislative and not a judicial question." *United States v. Gettysburg Electric Rwy.*, 160 U. S., 685.

These statutes do not plainly require the railroad company to take this farm or others abutting on county roads. As we understand the intent of Congress, it is not the duty of the court to compel the railroad company to acquire it. It nowhere appears in this record that the appellee as a common carrier has use for this farm. The appellants suggest no public use, the appellee, by this proceeding and by its counsel, denies that it needs this farm for any public use or for any use contemplated by Congress in these acts. Courts should be wary not to condemn private property for private use.

As was said in *United States ex rel. Riley v. The Baltimore & Ohio Railroad Company*, decided at the last term of this court: "When the power to exercise the right of eminent domain is delegated to a railway company, the courts will supervise the exercise of that power and restrain any clear case of abuse of the power. Should the courts be asked to compel the railroad to condemn property for which it finds no public use, and when it is plain the property is not needed? Can Congress require a railroad to condemn a farm which is in no sense necessary for the use of the railroad? 'Private property can not be taken for public use unless there is a necessity for such taking; for the taking of property when not at all necessary for a public purpose, or the taking of more property than is necessary for a given public purpose, is in effect a taking for private use.' *Randolph on Em. Dom.*, sec. 185; *Atlantic Railroad Co. v. Penny*, 119 Ga., 481."

The final order or decree of the court below must be affirmed, with costs, and it is so ordered. Affirmed.

**Appeal and Error.**—The setting aside, by an appellate court, of a verdict for plaintiff, and directing a judgment for defendant for failure of evidence, are held, in *Gunn v. Union R. Co.* (R. I.), 2 L. R. A. (N. S.), 362, not to infringe the constitutional right to due process of law and trial by jury.

Error in refusing a request to charge is held, in *Dambmann v. Metropolitan Street R. Co.* (N. Y.), 2 L. R. A. (N. S.), 309, not to be corrected by a subsequent charge to the same effect, where the court again expressly refuses to give the first instruction asked.

**Gift.**—A gift of his accumulated property by a man to his children at a time when he is earning a good income is held, in *James v. Aller* (N. J. Err. & App.), 2 L. R. A. (N. S.), 285, not voidable at his option, although the act may be improvident.

## Supreme Court of the District of Columbia.

DENIS E. CONROY,  
v.

THE UNKNOWN HEIRS, DEVISEES, AND  
ALIENEES OF CHARLES CARROLL, JR.

STATUTORY CONSTRUCTION; PUBLICATIONS; ACT OF  
JUNE 25, 1906, CONSTRUED.

1. The proviso to the act of Congress of June 25, 1906, amending sections 713 and 714, Code D. C., providing that all publications required by section 821 R. S., and all other publications authorized or required by existing law to be made in this District, "shall be printed in two or more daily newspapers published in the city of Washington, one of which shall be a morning newspaper," construed and held to make applicable to the banking institutions named in said sections 713 and 714 of all the rules providing for publication with reference to their condition and action, so as to place them in the same category as national banks, and requiring in addition or in lieu of the publications heretofore made by such corporations the publications required by said act; and such proviso held not to amend or repeal the various sections of the Code providing for the usual business of the court or for the publication of judicial notices authorized by such sections, or by the general practice or rules of the courts.
2. A fair construction of such act of June 25, 1906, held to confine the general words, "all other publications authorized or required by existing law," etc., to publications heretofore required by the laws of this District to be made by such banking institutions.
3. An order of publication in a suit to quiet title by adverse possession, limiting the publication to *The Washington Law Reporter* and *The Washington Times*, held sufficient.

No. 26,307. Equity. Decided August 14, 1906.

APPLICATION for order of publication in suit to quiet title by adverse possession.

*Mr. Nathaniel Wilson*, for *Washington Post*, in support of contention that all notices must be published in that paper.

*Mr. George Francis Williams* and *Mr. Charles F. Benjamin*, for the complainant, opposed.

*Mr. Justice BARNARD* delivered the opinion of the Court:

The purpose of the bill in this case is to establish the title of the complainant to lot 3, square 599, in Washington City, by adverse possession, as against the unknown heirs, devisees, and alienees of Charles Carroll, Jr.

The statute giving jurisdiction in such cases will be found in the Code of this District, sections 105 to 111, inclusive.

Section 110 provides that in case of unknown parties, "notice shall be given by publication to such persons according to such description, and the same proceedings shall be had against them as are had against non-resident defendants, except that said notice shall be published at least twice a month for such period as the court may order, which period shall not be less than three months, without good cause shown."

Section 107 provides the form of notice to be published as against non-residents, and section 108 says "every such order shall be published at least once a week for three successive weeks, or oftener, or for such further time as may be specially ordered."

The question the court is called upon to decide at this time is, does the act of Congress approved June 25, 1906, entitled "An act to amend sections 713 and 714 of an act to establish a code of law for the District of Columbia ap-



proved March 3, 1901, as amended by the acts approved January 31 and June 30, 1902, and for other purposes," change these provisions as to the publication of notice to unknown parties, and require that the notice "shall be printed in two or more daily newspapers of general circulation, published in the city of Washington, one of which shall be a morning newspaper?"

The language of the said act by which it is claimed the order of publication in this case must be so published is as follows:

*"And provided further, That all publications authorized or required by said section 5211 of the Revised Statutes, and all other publications authorized or required by existing law to be made in the District of Columbia, shall be printed, etc."*

What did Congress intend by this general language used in the proviso in this act relating to savings banks, trust companies, and other banking institutions in the District of Columbia? What was the matter to be corrected by the said legislation, and what did Congress intend to change or affect by this law?

It is contended by counsel that a proviso in a statute is to be strictly construed and that its office is to restrain or qualify some preceding matter or to except something from the enacting clause and to limit its operation.

Statutes must be construed to advance the beneficial purposes manifestly within the contemplation of the legislature at the time of their passage, and the court will endeavor to ascertain, from the language of the statute, what must have been the purpose of its enactment.

This act is expressly stated to be an act to amend two certain sections of the Code, although the words "and for other purposes" are added to the title. The enacting clause only purports to amend those two sections. The "other purposes," so far as definitely indicated in the body of the act, appear to be a modification of section 5211 of the Revised Statutes of the United States, which requires the reports referred to therein to be published in a newspaper published in the place where such association is established, or if there is no newspaper in the place, then in the one published nearest thereto in the same county, by providing that said reports "shall be printed in two or more daily newspapers of general circulation published in the city of Washington, one of which shall be a morning newspaper."

Did Congress intend by this act to modify the sections of the Code requiring publication as against non-residents, and unknown parties, and to take from the court of equity the usual discretion which the general law imposes upon that court, as well as the discretion given it by the statute in reference to publications of this character? If such had been the intention, was it not necessary to be more definite in statement, or must the court, by construction, read the statute as applying to all manner of publications on all kinds of business, and repealing or modifying by implication every statute or rule authorizing or requiring any notice to be published for any purpose in this District?

It is contended by counsel for complainant that the general language of this act must be limited to publications authorized or required

in relation to the banking institutions referred to in sections 713 and 714, there being certain publications that such institutions are required to make, in the District of Columbia, that are not required of similar institutions or corporations throughout the country. The argument is, that this general language, if confined to the publications to be made by such banking institutions, is given ample meaning, and all the meaning that Congress intended these words to have. Sections 718, 730, 736, and 738 of the Code provide for certain publications to be made by trust, loan, mortgage, and other corporations located in this District.

Also sections 609, 613, 617 and 635 of the Code require certain publications to be made pertaining to savings banks and other corporations in the District of Columbia; and these publications may be also included in, or modified by the general language of the act now under consideration.

These several sections refer to publications heretofore required by law to be made in the District of Columbia, relating to the banking institutions named, and they differ from the publications heretofore required by said section 5211 of the Revised Statutes of the United States to be made by national banks.

In *Lewis Sutherland Statutory Construction*, vol. 2, section 347, the rule invoked in this case is stated as follows:

"It is indispensable to a correct understanding of a statute to inquire first what is the subject of it, what object is intended to be accomplished by it. When the subject-matter is once clearly ascertained and its general intent, a key is found to all its intricacies—general words may be restrained to it, and those of narrower import may be expanded to embrace it to effectuate that intent."

The title of an act and the particular words of the enacting clause are matters which may control in the ascertainment of what the legislature had in mind in passing the act, and may help to ascertain with definiteness the purpose of the legislation.

In speaking of the title of an act as aiding in its construction, Chief Justice Marshall used this general language: "Where the mind labors to discover the design of the legislature, it seizes everything from which aid can be derived." *U. S. v. Fisher*, 2d Cranch, 358-386; *Patterson v. Bark Endora*, 190 U. S., 169.

In the case of *Manning v. Telephone Company*, reported in 32 *Washington Law Reporter*, 699, this court had occasion to consider what was the subject-matter of the act there involved, and under the testimony, was forced to the conclusion that the general words used in the act were to be limited to certain kinds of telephones with certain form of equipment, and thereby restricted the language to apply only to those telephones.

See, also, *Holy Trinity Church v. U. S.*, 143 U. S., 457-462, 465.

It is always competent for the court to ascertain the subject-matter of the act, and to confine general language used to that subject-matter, whenever there is a question of doubt as to the intention that it should also be extended to other subjects.

Looking at the act now under consideration,

I am forced to the conclusion that Congress never intended by it to amend or repeal the various and numerous sections of the Code providing for the usual business of the court, or for the publication of judicial notices authorized by such sections, or by the general practice of the courts, or by the rules adopted by this court in pursuance of the authority granted it to make rules; and I am convinced that what Congress had in mind, was the application to the banking institutions named in said sections 713-714, of all the rules providing for publications with reference to their condition and action, so as to place them in the same category with national banks, and requiring in addition, or in lieu of the publications heretofore made by such corporations, the publications required by this act; and that a fair construction of this act must confine the general words "all other publications authorized or required, etc.," to publications heretofore required to be made by such banking institutions under the laws of this District. Such being the opinion of the court, the order of publication asked for in this case will be signed, limiting the publication to the two papers named by complainant's counsel, although only one is a daily newspaper, and that not a morning newspaper. For the purposes of this proceeding such publication seems to me to be sufficient.

#### The American Bar Association.

The twenty-ninth annual meeting of the association will be held at St. Paul, Minn., on Wednesday, Thursday, and Friday, August 29, 30, and 31, 1906.

The sessions of the association will be at 10 o'clock a. m. and 8 o'clock p. m. on Wednesday and Thursday, and at 10 o'clock a. m. on Friday.

The sessions of the Section of Legal Education will be on Wednesday and Friday, August 29 and 31, at 3 o'clock p. m.

The session of the Section of Patent, Trade-Mark, and Copyright Law will be on Wednesday, at 3 o'clock p. m.

On Tuesday, August 28, at 8 o'clock p. m., and on Wednesday, August 29, at 8 o'clock p. m., there will be meetings of the Association of American Law Schools.

The sixteenth conference of Commissioners on Uniform State Laws will begin its sessions on Saturday, August 25, at 10 o'clock a. m., being Saturday of the week previous to the meeting of the American Bar Association.

All the meetings will be held at the Capitol.

The meetings of the association will be held in the House of Representatives. The Association of American Law Schools and the Section of Legal Education will meet in the Senate retiring room. The Section of Patent, Trade-Mark, and Copyright Law will meet in the Senate judiciary room, No. 237. The Commissioners on Uniform State Laws and the General Council will meet in the Senate chamber, except the meeting of the General Council on Tuesday evening, which will be at the reception room in the Hotel Ryan.

#### PROGRAMME OF THE ASSOCIATION.

##### WEDNESDAY MORNING, 10 O'CLOCK.

The President's address, by George R. Peck, of Chicago, Ill., communicating the most noteworthy changes in statute law on points of general interest, made in the several States and by Congress during the preceding year.

Nomination and election of members; election of the general council; report of the secretary; report of the treasurer; report of the executive committee.

##### WEDNESDAY EVENING, 8 O'CLOCK.

A paper by Roscoe Pound, of Lincoln, Neb., on "The Causes of Popular Dissatisfaction with the Administration of Justice."

A paper by John J. Jenkins, chairman of the Judiciary Committee of the House of Representatives of the United States, on the subject, "Can Congress Transfer to the State its Power to Regulate Commerce?"

Discussion upon the subject of the papers read.

##### THURSDAY MORNING, 10 O'CLOCK.

The annual address, by Alton B. Parker, of New York.

Reports of standing committees (see report of 1905, page 939, giving a memorandum of subjects referred): On jurisprudence and law reform; on judicial administration and remedial procedure; on legal education and admissions to the bar; on commercial law; on international law; on grievances; on obituaries; on law reporting and digesting; on patent, trade-mark, and copyright law; on insurance law; on uniform State laws.

##### THURSDAY EVENING, 8 O'CLOCK.

A paper by Thomas J. Kernan, of Baton Rouge, Louisiana.

A paper by Gen. George B. Davis, judge-advocate-general, United States Army.

Discussion upon the subject of the papers read.

Reports of special committees (see report of 1905, page 940): On classification of the law; on Indian legislation; on penal laws and prison discipline; on Federal courts; on industrial property and international negotiation; on title to real estate; on code of legal ethics; delegates to copyright congress.

##### FRIDAY MORNING, 10 O'CLOCK.

Nomination of officers; unfinished business; miscellaneous business; election of officers.

The annual dinner will be given by the association to its members and delegates at the Auditorium in Minneapolis at 8 o'clock on Friday evening.

Parlor No. 4 in the Hotel Ryan, St. Paul, will be open as a reception room for the use of members of the association and delegates during the meeting.

Members and delegates are particularly requested to register their names as soon as convenient after their arrival in the register of the association, which will be kept in the reception room at the Hotel Ryan in order that the list of those present may be complete. During the

sessions of the association the register will be kept at the Capitol.

The members of the general council will meet in the reception room at the Hotel Ryan on Tuesday evening, August 28, at 9.30 o'clock.

The attention of the various standing committees is called to the provision of the by-laws by which such committees are required to meet every year, at such hour as their respective chairmen may appoint, on the day preceding the annual meeting, at the place where the same is to be held. All such committees will also meet at the reception room at the hotel at 9.30 o'clock on Tuesday evening, August 28, for further consultation.

A reception will be given at the State Capitol on Wednesday evening at 9.30 o'clock by the members of the bar and citizens of St. Paul to the members of the American Bar Association and their wives and families.

On Thursday afternoon a luncheon will be given at the Town and Country Club, going by trolley car and returning by boat on the river, stopping at Minnehaha Falls.

On Saturday an excursion will be given to Lake Minnetonka, starting from St. Paul about 10 o'clock, and, after luncheon at the Lafayette Club, returning about 4 o'clock.

#### PROGRAMME OF THE SECTION OF LEGAL EDUCATION.

The sessions will be held on Wednesday and Friday, August 29 and 31, 1906, in the Senate retiring room at the capitol.

##### WEDNESDAY AFTERNOON, 3 O'CLOCK.

Address of the chairman of the section, William Draper Lewis, Dean of the Law Department of the University of Pennsylvania.

A paper by Charles M. Hepburn, Dean of the Law School of Indiana University, on "The State of Legal Education in the United States." Discussion of the papers presented.

##### FRIDAY AFTERNOON, 3 O'CLOCK.

A paper by James E. Young, Director of the Wharton School of the University of Pennsylvania, on "The Knowledge of Business Conditions as a Prerequisite to the Study of Law."

A paper by E. A. Gilmore, of the College of Law of the University of Wisconsin, on "The Relation Between Universities and Professional Instruction."

Discussion of the papers mentioned.

CHARLES M. HEPBURN, *Secretary*,  
Indiana University, Bloomington, Ind.

#### PROGRAMME OF THE SECTION OF PATENT, TRADE-MARK AND COPYRIGHT LAW.

The sessions will be held on Wednesday afternoon at 3 o'clock, in the Senate judiciary committee room, No. 237, at the Capitol.

Address of the chairman, Robert S. Taylor, of Fort Wayne, Indiana.

Papers will be read and a discussion on the papers will follow.

MELVILLE CHURCH, *Secretary*,  
McGill Building, Washington, D. C.

#### PROGRAMME OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS.

The sessions will be held on Tuesday and Wednesday evenings, August 28 and 29, 1906, at 8 o'clock, in the Senate retiring room at the Capitol.

##### TUESDAY EVENING, 8 O'CLOCK.

Address of the president of the Association of American Law Schools, Henry Wade Rogers, Dean of the Law School of Yale University.

A paper by Clarence D. Ashley, Dean of the New York University Law School.

A paper by Professor Floyd R. Mechem, University of Chicago Law School.

Discussion of the papers presented.

##### WEDNESDAY EVENING, 8 O'CLOCK.

Business meeting of the association.

W. P. RODGERS, *Secretary-Treasurer*,  
No. 21 West Ninth st. Cincinnati, Ohio.

#### CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS.

The sixteenth conference will be held in the Capitol, St. Paul, Minn., beginning Saturday, August, 25, 1906, at 10 o'clock a. m.

The members of the Committee on Uniform State Laws of the American Bar Association, as well as all members of the American Bar Association, are cordially invited to attend and to take part in the preparation, examination and discussion of uniform laws, relating to sales, warehouse receipts, bills of lading and partnerships.

AMASA M. EATON, *President*,  
Providence, R. I.

ALBERT E. HENSCHKE, *Secretary*,  
No. 11 Broadway, New York, N. Y.

The rule making certainty as to payment a condition of negotiability was applied in *Joseph v. Catron* (N. M.), 1 L. R. A. (N. S.), 1120, by denying the negotiability of a note payable upon the confirmation by Congress of a certain land grant.

Uttering a letter with a forged signature for the purpose of falsely representing the bearer to be a friend of the writer, and giving him standing with persons to whom it may be presented, is held in *People v. Abeel* (N. Y.), 1 L. R. A. (N. S.), 730, to be forgery under the New York statute.

Death—Illegitimate.—The mother of an illegitimate child is held, in *McDonald v. Southern R. Co.* (S. C.), 2 L. R. A. (N. S.), 640, not to be within the meaning of a statute giving a right of action for the benefit of the parent in case of the negligent killing of an infant. The other cases on right to recover for negligent killing of illegitimate, or to maintain action for benefit of illegitimate for negligent killing of relative, are collated in a note to this case.

**Alteration of Instrument**—That the maker of a note understood that it was to carry interest is held, in *Merritt v. Dewey* (Ill.), 2 L. R. A. (N.S.), 217, not to authorize the insertion of an interest clause without the maker's consent after the execution of the note.

**Highways**.—Owners of property abutting on a highway adjacent to a railway track are held, in *Hyde v. Fall River* (Mass.), 2 L. R. A. (N.S.), 269, not to sustain any special damages by discontinuance of the street within the railroad right of way and the erection of a bridge to carry the street over the tracks, so that, in order to cross the tracks, they are obliged to go away from them until they reach the foot of the bridge approach.

The right to recover against a municipality for an injury from a defective street is denied in *Oovington v. Lee* (Ky.), 2 L. R. A. (N.S.), 481, where the person injured was so drunk that he was unable to use the care to protect himself from harm that an ordinarily prudent person, if sober, would have exercised under the same circumstances.

The liability of a municipal corporation for injuries occasioned by a latent defect in the street or roads is held, in *Campbell v. Elkins* (W. Va.), 2 L. R. A. (N.S.), 159, to be absolute, and not dependent upon lack of diligence or care on the part of the corporation.

**Landlord and Tenant**—Lien for Unaccrued Rent.—Where rent was not yet due, held that the landlord was entitled to restrain the sale of the lessee's property which was subject to lien for rent. *Miller v. Bider* (Iowa), 105 N. W. Rep., 594.

#### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

#### Legal Notices.

##### FIRST INSERTION.

**George E. Fleming, Attorney**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration d. b. n. c. t. a. on the estate of Charles Anthony Schott, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of August, 1906. MINNA SCHOTT, 212 First st. S. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 10,829. Admn. [Seal.] 83-81

#### Legal Notices.

**Chas. F. Benjamin, Solicitor**

In the Supreme Court of the District of Columbia.  
**Denis E. Conroy v. Unknown Heirs of Charles Carroll, Junior.** Equity No. 26,807. Docket 68.

The object of this suit is to establish title by long and adverse possession to original lot 8, in square numbered 599, of the city of Washington, D. C., situate at the northeast corner of Second and P streets southwest. On motion of the complainant, and it appearing that diligent efforts have heretofore been made to find the defendants hereto, it is, this 14th day of August, 1906, ordered that the defendants, being the unknown heirs, devisees, and alienees of Charles Carroll, Junior, who owned the said realty in or about the year 1794, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published in The Washington Law Reporter and The Washington Times once a week for three successive weeks [Seal] before the return day herein named. By the Court: JOB BARNARD, Justice. A true copy. Test: John R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 83-81

**Wilton J. Lambert, Attorney**

In the Supreme Court of the District of Columbia,  
Holding a Special Term for Probate Business.  
In re the Estate of Rocco Brignole, Deceased.  
Probate, No. 13,885.

A application having been made herein for the probate of the last will and testament of said deceased, bearing date the 2d day of March, A. D. 1906, and for letters testamentary on said estate, by Louise Brignole, the executrix named therein, and summons having been issued against the parties hereinafter mentioned, and having been returned not to be found as to each of them, it is, this 17th day of August, 1906, ordered that Antonio Brignole, Bartholamo Brignole, Ambrogio Brignole, Pietro Brignole, Maria Cuari, Angulastina Brignole, Annunziata Brignole, and Anna Fuguzzi, and all others concerned, appear in said court on Monday, the 24th day of September, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice be published in The Washington Law Reporter and The Washington Times once for three successive weeks before the return day, the first publication to be not less than thirty (30) days before said return day. By the Court: WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 83-81

**Clarence E. Dawson, Attorney**

Supreme Court of the District of Columbia,  
Holding Probate Court.  
Estate of John W. Frost, Deceased.

No. 13,848. Administration Docket —.  
Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Charles P. Grandfield, it is ordered, this 16th day of August, A. D. 1906, that Charles D. Frost, and all others concerned, appear in said court on Wednesday, the 19th day of September, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. By the Court: WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 83-81

**Robinson White, Attorney**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Andrew Wunder, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of August, 1906. ELIZABETH WUNDER, 212 7th st. S. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,839. Administration. [Seal.] 83-81

**Legal Notices.**

**Philip S. Ball, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Sarah Cruikshank, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of August, 1906. KATE CRUIKSHANK, 8143 P st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,737. Administration. [Seal.] 33-St

**Robert S. Hume, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Frank Hume, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of July, 1906. EMMA P. HUME, 1235 Mass. ave., N.W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,817. Administration. [Seal.] 33-St

**J. J. Waters, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Joseph Fearson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of August, 1906. SARAH J. POINTON, 120 Seaton st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,786. Administration. [Seal.] 33-St

**Robert S. Hume, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Walton Goodwin, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of August, 1906. BILLY WALKER GOODWIN, 1516 F st. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,823. Administration. [Seal.] 33-St

**F. G. Coldren, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Michael O'Hearn, Deceased.  
No. —. Administration Docket —.

Application having been made herein for letters of administration on said estate, by William O'Hearn, it is ordered, this 11th day of August, A. D. 1906, that Benjamin Vandervoort and Mary Frances Vandervoort, and all others concerned, appear in said court on Friday, the 21st day of September, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be [Seal] not less than thirty days before said return day. JOB BARNARD, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 33-St

**Legal Notices.**

**L. Melendez King, Solicitor**  
In the Supreme Court of the District of Columbia.  
Mamie B. May, Richard M. May, and Turula Cunningham, Complainants, v. William May and Albert May, alias Huff, Respondents. Equity, No. 28,389.

On motion of complainants, by their solicitor, L. Melendez King, it is, this 10th day of August, A. D. 1906, ordered that the defendants, William May and Albert May, alias Huff, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter, The Washington Post and The Evening Star prior to said return day, and the order passed herein on August 8th, 1906, is for naught held. The object of this suit is to make partition by sale of the following-described real estate in the city of Washington, District of Columbia, to wit: Sublot lettered "F" in square numbered five hundred and seventy-seven (577), belonging to the estate of Felix May, deceased, to divide the proceeds thereof among the heirs of said [Seal] Felix May, and to appoint trustees therefor. JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. 33-St

**Geo. Francis Williams, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.  
Estate of Thomas F. Corridon, Deceased.  
No. 13,806. Administration Docket 35.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate by Margaret O'Connell, it is ordered, this 14th day of August, A. D. 1906, that Josephine Corridon, Nellie Mattson, Kathryn Corridon, Philip Corridon, and Mary Corridon, and all others concerned, appear in said court on Monday, the 17th day of September, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be [Seal] not less than thirty days before said return day. JOB BARNARD, Justice. Attest: WM. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 33-St

**SECOND INSERTION.**

**Edwin Forrest, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Daniel O'Brien, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 25th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 25th day of July, 1906. MARY E. O'BRIEN, 1208 Princeton st.; JOHN E. McNALLY, 813 1st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,053. Adm. [Seal.] 32-St

**Lester & Price, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Bernard P. Ruppert, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of August, 1906. HENRY J. RUPPERT, 920 O st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,854. Administration. [Seal.] 32-St

**Legal Notices.**

**Wm. A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Fannie Bryan, Deceased.**  
**No. 13,804. Administration Docket --**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by the American Security and Trust Company, the executor named in said will, it is ordered, this 8th day of August, A. D. 1906, that Augustus R. Bryan, and all others concerned, appear in said court on Tuesday, the 14th day of September, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in "The Washington Law Reporter," "The Washington Post," and "The Evening Star" once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] **JOB BARNARD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 32-St

**Charles W. Main, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Ex Parte in the Matter of the Petition of Charles**  
**Edmund Mills. In Equity, No. 26,441.**

**ORDER OF PUBLICATION.**

The object of the petition in the above-entitled case is to obtain a decree changing the surname of the petitioner from Mills to Palmer. The petition states that the petitioner was born in Baltimore, Maryland, in the year 1878; that his father, Charles Mills, died in the year 1880; that his mother, Katherine Mills, married one John Palmer in Baltimore, Maryland, in the year 1881, and that they removed to Washington, District of Columbia, sometime during said year and have resided continuously in said District since then; that the petitioner has lived and resided with his stepfather, John Palmer, since his (Palmer's) marriage with Katherine Mills, and that petitioner has always been known among his acquaintances and associates as Charles Edmund Palmer; that petitioner desires that his surname Mills shall be changed to Palmer in order to have uniformity in the family name, and because it will be beneficial to him in his business and in many other respects. It is thereupon, this 23d day of July, A. D. 1906, ordered by the Supreme Court of the District of Columbia, holding an equity term, that the petitioner cause a copy of this order, with the object and substance of the petition, to be inserted in The Washington Post and The Evening Star, two newspapers of general circulation published in the District of Columbia, once a week for three successive weeks before the 30th day of August, 1906, giving notice to whom it may concern to be and appear in this court, in person or by solicitor, on or before the 20th day of August, 1906, to show cause, if any there be, why a decree should not pass as prayed.

[Seal] **ASHLEY M. GOULD, Justice.** A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 32-St

**W. A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary Frances Waite, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 31st day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of August, 1906. **MORRISON R. WAITE**, of Cincinnati, Ohio; **AMERICAN SECURITY AND TRUST COMPANY**, by James F. Hood, Secretary. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,835. Administration. [Seal.] 32-St

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**Legal Notices.****THIRD INSERTION.**

**Thos. Walker, Attorney**  
**In the Supreme Court of the District of Columbia.**  
**In re Estate of John Johnson, Deceased.**  
**Admr. No. 12,782.**

Upon consideration of the report of Walter G. Bradley, executor, filed herein, it is, this 31st day of July, A. D. 1906, adjudged, ordered, and decreed by the court that the sale thereby reported of the following-described real estate, situate in the county of Washington, in the District of Columbia, and known as the west half (½) of the east half (½) of lot thirty-two (32) in block eighteen of the Howard University subdivision of the farm of John A. Smith, known as "Effingham Place," the same fronting twelve and one-half (12½) feet on V street N. W. (formerly Wilson street N. W.) by the depth of one hundred and fifty (150) feet, being premises No. 845 V (formerly Wilson) street N. W., to Furman J. Shadd, for five hundred and fifty (\$550.00) dollars, be ratified and confirmed, unless cause to the contrary be shown on or before the 3d day of September, A. D. 1906. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said last mentioned date.

By the Court: **ASHLEY M. GOULD, Justice**  
 A true copy. Attest: James Tanner, Register of Wills. 31-St

**Frederick S. Tyler, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Benjamin Franklin Whiteside, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 27th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of July, 1906. **EDWARD W. WHITESIDE**, 1921 Pa. ave. N. W. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,830. Administration. [Seal.] 31-St

**Lyon & Lyon, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Max Goldsmith, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 27th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 30th day of July, 1906. **ELLEN GOLDSMITH, CHAS. A. GOLDSMITH**, 1910 Calvert st. N.W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,824. Admn. [Seal.] 31-St

[Filed July 30, 1906. J. R. Young, Clerk.]

**Robert E. Mattingly, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding Equity Court.**  
**Mildred M. Posey, Complainant, v. Charles P. Posey,**  
**Defendant.**  
**Equity, No. 26,167.**

The object of this suit is to require the defendant to provide suitable maintenance for the support of the complainant, his wife, and on motion of complainant, by Robert E. Mattingly, her solicitor, it is, this 30th day of July, A. D. 1906, ordered that the defendant cause his appearance to be entered herein on or before the fourth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order. Provided this order be published in The Washington Times, The Washington Post, and in The Washington Law Reporter once a week for three successive weeks. By the Court: **ASHLEY M. GOULD, Justice.** A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 31-St

Justice blanks of every description for sale at this office.

**Legal Notices.**

**Richard Curtin, C. W. Darr, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Mary A. Lyons**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 31st day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of July, 1906. **MARGARET CURTIN**, 656 Mass. ave. N. E. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,798. Administration. [Seal.] 31-St

**Raymond B. Dickey, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Thomas A. Mayes**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 27th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 27th day of July, 1906. **WILLIAM W. GORDON**, Stanhope Apt., New Jersey ave.; **JACOB W. COLLINS**, 63 Bryant ave. N. W.; **MORSE O. MAYES**, 1016 7th st. S. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,822. Administration. [Seal.] 31-St

**In the Supreme Court of the District of Columbia.**  
**Robert A. Phillips v. William B. Osborne.**

Equity, No. 26,053.

This cause coming on to be heard upon the report of sale by **R. Henry Phillips**, trustee, filed in this cause on the 23d day of July, 1906, and the same having been duly considered by the court, it is, this 1st day of August, 1906, ordered that the sale mentioned in said trustee's report be, and the same is hereby, confirmed and ratified unless cause shall be shown to the contrary on or before the 4th day of September, 1906, at 10 o'clock A. M. Provided a copy of this order be published once a week for three weeks before said day in *The Washington Law Reporter* and *The Washington Times*. [Seal] **JOB BARNARD**, Justice. A true copy. Test: **J. R. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. 31-St

**Alexander H. Bell, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Chas. E. Roberts**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of July, 1906. **MARY R. ROBERTS**, 680 7th st. N. E. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,808. Administration. [Seal.] 31-St

**J. J. Darlington, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **V. Baldwin Johnson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 31st day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of July, 1906. **MARGARITA JOHNSON**, 1201 Q st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,841. Administration. [Seal.] 31-St

**Legal Notices.**

**William Stone Abert, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Walter T. Wardell**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of August, 1906. **WILLIAM STONE ABERT**, 408 5th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,725. Administration. [Seal.] 31-St

**C. W. Darr, R. Curtin, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Annie Collins**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of July, 1906. **THOMAS J. SAFFELL**, 108 Seaton Place N. E. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,832. Administration. [Seal.] 31-St

**Irving Williamson, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Elizabeth Behrens Kenny**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Tuesday, the 28th day of August, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 27th day of July, 1906. **JOHN W. PILLING**, Executor, by **Irving Williamson**, Attorney. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,832. Administration. [Seal.] 31-St

**FOURTH INSERTION.**

**W. H. Linkins, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**

**Elizabeth T. Wilson, Complainant, v. William Waugh et al., Defendants.** Equity, No. 26,345.

The object of this suit is to declare the title of the complainant to the south twenty-six (26) feet one (1) inch front by the full depth of original lot six (6) in square one hundred and twenty-two (122) to be good in record in her, in fee simple, by reason of adverse possession. On motion of complainant by her solicitor, **Wm. H. Linkins**, it is, by the court this 25th day of July, 1906, ordered that the defendants, **William Waugh**, **Eliza Waugh**, and the unknown heirs of **A. Fisher**, and **Ezra Varden**, if the said named parties be living, and if dead, their or either of their unknown heirs, devisees, grantees, and alienees, both immediate and mediate, and the unknown heirs of such devisees, grantees, and alienees, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided this order be published once a week for three successive weeks in *The Washington Law Reporter*, *The Washington Post* and *The Washington Times*, before said return day, the first publications to be on the twenty-seventh day of July, 1906, and does not read as originally passed. By the Court: **ASHLEY M. GOULD**, Justice. A true copy. Test: **J. R. Young**, Clerk, by **F. E. Cunningham**, Asst. Clerk. 30-4t



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### Amendment to the Bankruptcy Act.

By an act of Congress, approved June 15, 1906, clause 4, of subdivision B of the Bankruptcy Act, was amended so as to include traveling or city salesmen within those whose wages are entitled to priority in the distribution of a bankrupt estate. The clause, as amended, reads as follows:

"Fourth. Wages due to workmen, clerks, traveling or city salesmen, or servants, which have been earned within three months before the date of commencement of proceedings, not to exceed \$300 to each claimant."

### Right of an Accused to be Confronted With Witnesses Against Him.

An interesting decision relative to what constitutes a confrontation by a witness, within the meaning of the constitutional provision that every person charged with an offense shall be confronted with the witnesses against him, was rendered by the Supreme Court of Georgia, in the recent case of *Ralph v. State*, 52 S. E. Rep., 298. In that case it was held that where, in a criminal prosecution, the defendant is deaf, the court should permit the evidence of the witnesses to be communicated to him in some manner. The court, however, declines to regard as error the action of the trial court in refusing to postpone the trial, at the request of the defendant, until an expert typewriter could be ob-

tained to take the evidence on the machine as it was given, and holds that the requirements of the constitution were satisfied by the action of the court in allowing counsel for the accused to write down the testimony as the trial progressed and allowing defendant to read it.

### Liability of the Manufacturer of An Article for Negligence.

The recent case of *Watson v. Augusta Brewing Company*, 52 S. E. Rep., 152, affords an interesting and novel exposition of the liability of the manufacturer of an article for injuries resulting from defects therein. In that case a manufacturer, who had bottled up some pieces of glass with a beverage, which he advertised was harmless and refreshing, was held liable to one who imbibed the glass while drinking from the bottle. The principal contention advanced on behalf of the defendant was that he was not liable, for the reason that there was no priority of relationship between the parties, inasmuch as the beverage had not been sold directly by the defendant to the plaintiff. But the court holds that the duty for the violation of which the manufacturer is liable was a duty owed by him to the general public.

### Insurance Policy—Days of Grace—Provision for Continued Insurance.

In *Grattan, Admr., v. The Prudential Insurance Company of America*, decided by the Supreme Court of Minnesota, it appeared that a policy of life insurance provided that the premiums should be paid annually on the first day of June; that one month's grace would be allowed the insured within which to pay the same; that the policy would be continued in force during that time, and further, that, notwithstanding a failure on the part of the insured to pay the premium when due, the insurance would be continued for the period of sixty days from the "due date of the premium as specified on the first page of the policy." The due date there specified was June 1. The court held that the sixty-day period commenced to run from that date and not from the expiration of the thirty days' grace allowed on each payment.

**Labor Unions.**—A contract by a manufacturer to employ as laborers none but members of a particular union is held, in *Jacobs v. Cohen* (N. Y.), 2 L. R. A. (N. S.), 292, not to be void as against public policy.

# Court of Appeals of the District of Columbia.

GEORGE J. SEUFFERLE, APPELLANT,

v.

HENRY B. F. MACFARLAND ET AL., COMMISSIONERS, ETC.

## CONDEMNATION OF LAND; APPEALS; OUTFALL SEWER; SPECULATIVE DAMAGES; INSTRUCTIONS TO JURY.

1. An appeal lies to this court from a final order of the Supreme Court of this District in condemnation proceedings instituted under chapter 15 of the Code, relating to the condemnation of land for public use, such an appeal being within the general appellate jurisdiction conferred upon this court by section 226 of the Code.
2. In condemnation proceedings under chapter 15 of the Code, the jury are not restricted to a mere consideration of the evidence and the allegations of the parties, but are required to exercise their own powers of judgment and observation. They are not bound by the opinions of experts or the apparent weight of evidence, but may give their own conclusions.
3. And as the court can not bring into review the various sources and grounds of judgment upon which the jury have proceeded, it would be improper for the court to instruct them to receive expert testimony and give weight to it; and it is not error to refuse such an instruction.
4. In proceedings by the District Commissioners, under chapter 15 of the Code, it was sought to condemn land and also a right of way through the lands of appellant and others for the purposes of an outfall sewer. The sewer, after passing through this right of way, passed under the bed of the river to the center of the channel, where the outlet will be, and there the sewage, after having passed through a strainer of one-inch mesh and a sediment chamber and after being skimmed, will be discharged into the river. The court below instructed the jury to consider whether under the operation of the sewer the waters of the Potomac will deposit sewage on appellant's land—distant at its nearest point 1,000 feet from the outlet—which would give forth foul, poisonous odors, etc., and if they so found to consider the effect of such deposit of sewage and of such odors on the remaining land and award damages therefor. *Held*, that this was the most favorable instruction to which appellant was entitled; and an instruction that, if the jury found the tides and waters of the river would hold such sewage in suspension or solution and would give forth foul odors which the air would carry over the land of appellant, depreciating the value of the land, they should award damages therefor, was properly refused.
5. The injury complained of in the rejected instruction, being a mere consequential matter resulting from the exercise of the public right in Congress to use the bed of a navigable river, as the least injurious and inconvenient method for the discharge of the sewage of Washington, is *damnum absque injuria* and does not amount to a taking within the meaning of the provision of the Constitution.
6. The court below properly refused an instruction to the jury to consider whether persons wishing to buy the land will be apprehensive that the operation of the sewer will damage the lands, and the effect of such apprehension on the value of the land.

No. 1639. Decided June 12, 1906.

APPEAL by exceptant from an order of the Supreme Court of the District of Columbia, holding a District Court (Dist. Ct., No. 634), overruling exceptions to and confirming a verdict and award of a jury in condemnation proceedings under chapter 15, Code D. C. Affirmed.

*Mr. F. Snowden Hill* for the appellant.

*Mr. E. H. Thomas* and *Mr. J. F. Smith* for the appellee.

*Mr. Justice McCOMAS* delivered the opinion of the Court:

Pursuant to an act of Congress a board of sanitary engineers appointed by the President of the United States had prepared and sub-

mitted a report on the sewerage system of the District of Columbia, and in it were detailed plans for a certain outfall sewer for the discharge of the sewage of Washington which was recommended. Congress made appropriations to pay for lands and right of way and for other expenditures. The appellees, the Commissioners of this District, accordingly instituted this proceeding to condemn such land and right of way for an outfall sewer, and among other acquisitions to condemn a right of way 20 feet wide and about 1,200 feet in length through the land of George J. Seufferle, the appellant, whose land is located in this District near Giesboro point on the Potomac River. Under chapter 15 of the Code of this District the appellees filed a petition in the Supreme Court of the District of Columbia, holding a District Court of the United States, seeking to acquire by condemnation "under judicial process" certain lands in fee and a right of way 20 feet wide in certain other lands, extending from the land of the United States Hospital for the Insane as far as the point in the land of Alexander T. Grimes (one of the respondents in this proceeding), where said outfall sewer will enter the Potomac River. The appellant, one of the respondents, owned a tract containing about 188 acres, adjoining the land of Grimes, and the lands of both border on and extend to the low water-mark of the Potomac River, where the tide ebbs and flows, the land of Grimes fronting about 850 feet and the land of the appellant about 3,400 feet on the Potomac.

When the outfall sewer leaves Grimes' land it will pass under the bed of the river to the bottom and center of its channel, 700 or 800 feet away, where its outlet will be, and the sewage of Washington City (now being discharged into that river and into its Eastern Branch and above said branch) after having passed through a strainer of one-inch mesh and a sediment chamber and after being skimmed, will pass through the outfall sewer and its outlet into the Potomac.

This outlet will be further down the river and distant 1,000 feet from the nearest point of appellant's land, and in the middle of the channel, where of course the water is deepest, in greatest volume, and where the velocity of the current is greatest. In accordance with chapter 15 of the Code, providing for condemnation of land for public use, and pursuant to appellees' petition, three commissioners were appointed to appraise the values, and these commissioners made their award with which all parties were dissatisfied, and of such dissatisfaction the court was duly notified. Thereupon, pursuant to the Code, the marshal was directed to summon seven disinterested men as a jury of condemnation, and it appears that the court below gave the jury certain instructions, and then the jury went upon the premises to be condemned, and after hearing the parties and certain testimony of other persons, agreed upon its written verdict which the marshal returned to the court below, the statute providing for "a written verdict to be signed by them or a majority of them and attested by the marshal, who shall return the same to the court where it shall be recorded."

The appellant filed exceptions to the verdict of the jury and made a motion that the court

set the same aside and direct a new jury to be summoned. The court below overruled these motions and exceptions, and the report and verdict of the jury for the amount of damage for the right of way over the land of the appellant and the amount of damage which would result to the remainder of the appellant's land for the taking of such right of way for an outfall sewer, were finally ratified and confirmed and the right of way so taken was condemned. From the order of the court below denying his motion for arrest of confirmation of the verdict of the jury, and from the subsequent order of the court below finally confirming said verdict, the appellant entered an appeal to this court.

Before proceeding to consider the merits of the case, we must dispose of a motion to dismiss this appeal which was filed, claiming that in this summary proceeding for condemnation of land this court could not review the proceeding and the respondent below had no right of appeal in this case. This question has been decided by this court at this term in the case of Winslow v. The Baltimore and Ohio Railroad Company, where this court held that in a condemnation proceeding under several acts of Congress relating to said railroad and to the Union Station for steam railroads in the city of Washington, and where by those acts a special appeal was given to the court below in proceedings for the condemnation of certain lands, this court has the power and duty to review the final order of the Supreme Court of this District, holding a District Court of the United States, ratifying and confirming a condemnation of lands for public use, and that such appeal is within the general appellate jurisdiction conferred upon this court by section 226 of the Code. In accordance with that decision we now decide that an appeal from the condemnation in this case, a proceeding under chapter 15 of the Code, relating to the condemnation of land for public use and not providing for an appeal, lies to this court under such general appellate jurisdiction. The motion to dismiss this appeal is overruled. We need not here repeat the reasons for this action. We refer to the decision in the Winslow case.

We proceed to review this case upon such appeal. After the jury was sworn the court below, in behalf of the appellees, granted ten instructions to the jury, which we need not here consider. The respondent, Seufferle, asked the court for fifteen instructions to the jury to guide them in ascertaining and deciding the damage sustained by reason of the taking of his land for any of the objects of the petition in this case. The court gave all these instructions asked for, excepting those numbered 9, 13, and 14. The jury were instructed that the respondent was entitled to damages for the right of way taken, and to damages for interruption of drainage, if any, and for interference or obstruction thereto by the construction of said sewer, and, if such obstruction be found, damages for the effect thereof upon the whole tract of land of the respondent. Among others, the court granted the following instruction:

"8. The jury, in ascertaining and appraising the difference between the market value of each whole tract of land and appurtenances thereto (through a part of which the right of way for

said outfall sewer will pass) and the market value of what will be left of the same after the taking of such right of way or land for said sewer, shall consider whether, under the plan of said outfall sewer set forth in this proceeding and its operation in accordance with said plan, the tides and waters of the Potomac River, by their natural action, force and flow, will carry to and deposit on any part of any such whole tract of land, any of the sewage that will pass through said outfall sewer; and if they so find, they will consider whether said sewage, when so deposited, will give forth foul, poisonous, or unhealthy odors, exhalations, gases, or vapors; and, if they so find, they will consider the effect, if any, of said sewage when so deposited, and said odors, exhalations, or vapors, upon the value of said whole tract of land and appurtenances thereto, remaining after the taking of said right of way for said sewer."

The court refused to grant the appellant's instructions, numbered 9, 13, and 14, which are as follows:

"9. The jury, in ascertaining and appraising the difference between the market value of each whole tract of land and appurtenances thereto (through a part of which the right of way for said outfall sewer will pass) and the market value of what will be left of the same after the taking of such right of way or land for said sewer, shall consider whether, under the plan of said outfall sewer set forth in this proceeding and its operation in accordance with said plan, the tides and waters of the Potomac River, by their natural action, force and flow, will hold in suspension or solution, for a time, at or near the said whole tract of land and appurtenances thereto, any of the sewage that will pass through said outfall sewer; and if they so find, they will further consider whether said sewage so held, will give forth foul, poisonous or unhealthy odors, exhalations, gases or vapors and, if they so find, whether the air, breeze or wind will naturally carry the same upon or over said land and appurtenances; and if they so find, they will consider the effect, if any, of such odors, exhalations, gases or vapors carried as aforesaid, upon the value of said whole tract of land and appurtenances thereto, remaining after the taking of said right of way for said sewer."

"13. The jury, in ascertaining the difference between the market value of each whole tract of land and appurtenances thereto (through a part of which the right of way for said outfall sewer will pass) and the market value of what will be left of the same after the taking of said right of way or land for said sewer, shall consider whether persons who may wish to buy said remaining land and appurtenances will, in the exercise of reasonable judgment and care, be apprehensive that said sewer and operation will, under the plan thereof set forth in this proceeding, damage said remaining land and appurtenances, and if they so find, they shall consider the effect, if any, of said apprehension upon the value of said remaining land and appurtenances."

"14. In the ascertainment of the difference between the market value of each whole tract of land (through a part of which the right of

way for said outfall sewer will pass) and the market value of what will be left of the same after the taking of said right of way or land for said sewer, if a witness qualify as an expert on the value of said land and testify as to such value, he may be asked the effect, if any, of the construction and operation of said outfall sewer upon the value of said remaining land."

The sole question here is whether or not the court below erred in refusing these instructions. Notwithstanding the exhaustive argument and brief of appellant's counsel, we are convinced, after a careful examination, that the learned court below, in granting the twelve instructions asked by the appellant, fully and completely instructed the jury, and indeed most favorably on behalf of the respondent. We do not here determine whether or not the court below committed error in granting any of these instructions.

In *Shoemaker v. United States*, 147 U. S., 282, 305, the Supreme Court, in considering the act authorizing the condemnation of Rock Creek Park and the powers and proceedings for condemnation thereunder, made observations quite appropriate here, where chapter 15 of the Code, regulating the condemnation of land, governs this proceeding: "The scope of action of the board of commissioners was plainly, by the terms of the act and the nature of the inquiry, not restricted to a mere consideration of the evidence and allegations of the parties, but included the exercise of those powers of judgment and observation which led to their selection as fit persons for such a position.

"While the board should be allowed a wide field in which to extend their investigation, yet it has never been held that they can go outside of the immediate duty before them, viz., to appraise the tracts of land proposed to be taken, by receiving evidence of conjectural or speculative values, based upon anticipated effect of the proceedings under which the condemnation is had. *Kerr v. South Park Commissioners*, 117 U. S., 379, 380.

"In connection with this part of the subject, we may appropriately consider the objection made to the action of the court below in declining to review and pass upon the evidence that had been produced before the commissioners.

"If, as we have said, the court below was right in refusing to restrict the commissioners to a mere consideration of the evidence adduced, then it would seem to follow that the court could not be legitimately asked, in the absence of any exceptions based upon charges of fraud, corruption, or plain mistake on the part of the appraisers, to go into a consideration of the evidence. The court can not bring into review before it the various sources and grounds of judgment upon which the appraisers have proceeded. The attempt to do so would transfer the function of finding the values of the lands from the appraisers to the court. Such a course would have presented a much more serious allegation of error than we find in the objection as made.

"The rule on this subject is so well settled that we shall content ourselves with repeating an apt quotation from *Mills on Eminent Domain*, 246, made in the opinion of the court below: 'An appellate court will not interfere with the report of commissioners to correct the amount

of damages except in cases of gross error, showing prejudice or corruption. The commissioners hear the evidence and frequently make their principal evidence out of a view of the premises, and this evidence can not be carried up so as to correct the report as being against the weight of evidence. Hence, for an error in the judgment of commissioners in arriving at the amount of damages, there can be no correction, especially where the evidence is conflicting. Commissioners are not bound by the opinions of experts or by the apparent weight of evidence, but may give their own conclusions.'"

Instruction No. 14 asked the court to anticipate the proffer of testimony before the jury. It asked the court to declare that "if a witness qualify as an expert on the value of said land and testify as to such value, he may be asked the effect, if any, of the construction and operation of said outfall sewer upon the value of said remaining land." The record says the appellant offered evidence tending to prove the matters and facts mentioned in the three instructions refused by the court, but the jury were told to disregard such evidence. Such an instruction concerning an expert witness might mislead the appraisers, whose functions, as the Supreme Court says, include their own judgment and inspection of the lands taken as well as a consideration of the evidence adduced by the parties. And since the court can not bring into review before it the various sources and grounds of judgment upon which the appraisers have proceeded, it would not be proper for the court below to instruct them to receive expert testimony and to give it weight in this proceeding; as the Supreme Court has said, they are not bound either by the opinions of experts or by the apparent weight of evidence, but may give their own conclusions. Nor could the marshal with the jury pass upon the qualifications of a witness as an expert to testify to the effect of the construction and operation of such outfall sewer. Plainly they could not rightly estimate the value of such expert's opinion of the depreciated value of the remaining land of the appellant as a deduction from his expert opinion of the probable operation of such outfall sewer in the discharge of the sewage of Washington. Though it is not in the record, the court may take judicial notice of the course of nature of the location of the falls of the Potomac near Washington, where the velocity of the current of a great river is first impeded by the tide, and that the variation between mean high tide and mean low tide below Giesboro point, where the mouth of the outfall sewer is to be located, is less than three feet. Surely it would require the opinion of an experienced trial judge to determine whether such an expert had qualified as a witness. As was said by Justice Peckham, now of the Supreme Court, in *Roberts v. N. Y. E. R. R.*, 128 N. Y., 464, approved in *Belt R. R. Co. v. Sattler*, 100 Md., 335, "as to what the value would have been under circumstances which never existed, he knows and can know nothing, but must form an opinion wholly speculative in its nature," and the judgment in the latter case was reversed because "it was error to have permitted experts to give their opinions as to the fact as well as to the exact amount of damage." *Belt R. R.*

Co. v. Sattler, *supra*, 338. The learned court below committed no error in rejecting this instruction.

Under the eighth instruction, heretofore quoted, the jury were told to consider whether under the operation of the outfall sewer the waters of the Potomac will deposit sewage on any part of the respondent's land, and whether such sewage so deposited will give forth foul, poisonous, or unhealthy odors, exhalations, gases, or vapors, and the jury were told to consider the effect of such from sewage so deposited, if any, and of such odors or exhalations, if any, upon the value of the whole tract of land of the respondent remaining after the taking of the 20-foot right of way for the sewer. This was a most favorable instruction, and it appears that the jury considered this subject, and they reported that no damage would result to the remainder of the land of respondent by reason of the deposit upon its riparian boundaries of such sewage. This suggests that the jury would have reported that there would be no damage to respondent's land had the court instructed them as asked in instruction No. 9, before quoted. It was asked in this instruction, No. 9, that the jury should consider whether under the operation of the outfall sewer, in accordance with the plan, tides, and waters of the river by their natural action, force, and flow, will so hold in suspension or solution near appellant's land any of the sewage from the outfall sewer, and if so, whether such sewage so held will give forth foul or unhealthy odors, exhalations, or gases, and if so, whether the air will naturally carry the same over said land of appellant, and if so, whether the effect of such odors, exhalations, and gases so carried will depreciate the value of the whole tract of land of the appellant.

The outfall sewer passed through Grimes' land to the bottom and center of the channel of the Potomac near the south end of Grimes' land, which borders 850 feet on the river, and the appellant's land joins that of Grimes on the north and nearer the city, and the sewage of Washington, after being passed through a strainer of one-inch mesh and a sediment chamber and being skimmed, will pass through the outfall sewer at the bottom of the river in the middle of its channel, and though subject to such northward impulse, as for some hours the incoming tide may give it, will be carried by the current and great volume of water down the river and still further away from the land of the appellant. The effect of the skimming and office of the one-inch strainer to liberate small particles more likely to be more rapidly dissolved by the water, and to prevent floating matter from stranding and polluting the shores or liberating gases or odors, appears to have been considered by the jury when they reported no damage accruing under their consideration of the eighth instruction before quoted. We may not review the grounds of judgment of the appraisers, but their finding suggests what we have said. In the case of *In re Stockport, etc.*, 33 N. L. J. (N. S.), Q. B., 251, the doctrine was established that the injurious affecting of the appellant's land by the use of the land taken as distinguished from the construction of the works, is a particular injury different in kind from that which is suffered from the rest of the work, and that by this rule

the landowner gets no more than justice, even if others get less. *Lincoln v. Commonwealth*, 164 Mass., 376. And it may be conceded that a final award in a case like this is final and conclusive between the parties as to the value of the land and the damages sustained, and after such proceedings the taker of land should not be subject from time to time to an action at law by the landowner or his successor in estate to recover damages for some injury not foreseen. *Van Schoick v. The Delaware and Raritan Canal Co.*, 20 N. J. L. Rep., 254. And that the only means of redress afforded the landowner is that given by article 15 of the Code, and that such mode is exclusive. *Dillon on Munic. Corp.*, §93; *Heiser v. The Mayor, etc.*, 104 N. Y. Rep., 72.

The case we are here considering is quite different from *Belt R. R. Co. v. Sattler, supra*, where smoke and vapors discharged by engines, accompanied by noise, and vibrations caused by engines and trains, seriously injured the dwelling and its occupants alongside the railroad tunnel; and very different from *Railroad Co. v. Fifth Baptist Church*, 108 U. S., 234, where the smokestacks of the engine house poured smoke into the church, and the engines greatly disturbed and annoyed the occupants of the church while at worship by their rumbling, by blowing off steam, ringing bells, sounding whistles, puffing smoke from chimneys, and spouting cinders, dust, and offensive odors upon the worshippers during religious exercises in the church adjacent to the railroad's buildings and its operation.

In this case it is apparent from the record that the appellant's land through which the sewer will run is quite remote from the outlet of the sewer, and that the injurious gases and exhalations from which he apprehends injury to his land, if realized, will more seriously affect riparian owners farther down the river than they will affect the respondent. They appear to be rather imaginary than consequential. There is no physical invasion of appellant's land. The spot of apprehended danger is far removed from his riparian boundary. The means whereby the injury is apprehended are in the bottom of a navigable river, subject at all times to the servitude of the Federal Government for regulation. The use of the Potomac, of which respondent complains, is sanctioned by that Government. The injury respondent apprehends, if it materialize, will more directly injure commerce on the river than it will the lands of riparian owners. The Federal Government, which holds this highway in trust for the public, may reasonably be expected to prevent the Potomac River, near its capital city, from becoming a public nuisance. "The remedy, therefore, for a consequential injury resulting from the State's action through its agents, if there be any, must be that, and that only, which the legislature shall give. It does not exist at common law. The decisions to which we have referred were made in view of *Magna Charta* and the restriction to be found in the constitution of every State, that private property shall not be taken for public use without just compensation being made. But acts done in the proper exercise of governmental powers, and not directly encroaching upon private property, though their consequences

may impair its use, are universally held not to be a taking within the meaning of the constitutional provision. They do not entitle the owner of such property to compensation from the State or its agents, or give him any right of action. This is supported by an immense weight of authority. Those who are curious to see the decisions will find them collected in *Oooley on Constitutional Limitations*, page 542 and notes. The extreme qualification of the doctrine is to be found, perhaps, in *Pumpelly v. Green Bay Co.*, 13 Wall., 166, and in *Eaton v. Boston, Concord & Montreal Railroad Co.*, 51 N. H., 504. In those cases it was held that permanent flooding of private property may be regarded as a 'taking.' In those cases there was a physical invasion of the real estate of the private owner, and a practical ouster of his possession. But in the present case there was no such invasion." *Transportation Co. v. Chicago*, 99 U. S., 635, 641.

"That can not be a nuisance, such as to give a common law right of action, which the law authorizes. We refer to an action at common law such as this is. A legislature may and often does authorize and even direct acts to be done which are harmful to individuals, and which without authority would be nuisances; but in such a case, if the statute be such as the legislature has power to pass, the acts are lawful, and are not nuisances unless the power has been exceeded. In such grants of power a right to compensation for consequential injuries caused by the authorized erections may be given to those who suffer, but then the right is a creature of the statute. It has no existence without it." *Transportation Co. v. Chicago*, supra, 640. See *Gibson v. United States*, 166 U. S., 269, 275.

Such an injury as is complained of in the 9th instruction would be a mere consequential matter resulting from the exercise of the public right in Congress to utilize the bed of a navigable river, possessing a great volume of water, with a current of marked velocity, for it is well known that water is an almost universal solvent, as the least injurious and inconvenient method for the discharge of the sewage of Washington. This is *damnum absque injuria*; it does not amount to a taking under the Constitution. The case of *Eaton v. B. C. & M. R. R. Co.*, 51 N. H., 504, upon which appellant's counsel so strongly relies, is characterized by the Supreme Court, along with *Pumpelly's* case, as the extreme qualification of the doctrine. We do not feel authorized to make the great advance required by this 9th instruction. The learned court below properly refused it.

The court properly refused the thirteenth instruction. The case of *Essex v. Acton*, L. R., 14, App. Cas., H. L., is quite different in its facts, and the excerpts from Lord MacNachten's opinion, relied on here, are not sanctioned by the other judges, nor taken alone do they warrant the application to this case made by respondent's counsel, in our opinion. To pour sewage out upon the land, as in that case, is quite different from discharging sewage in the bottom of the Potomac. To instruct the jury, as asked in the thirteenth instruction, to consider whether persons who may wish to buy the remaining lands will be apprehensive that the sewer in its operation will damage such lands,

and then to consider and measure the effect of such apprehensions upon the value of the remaining land, would be to incite the jury to conjecture and speculation. The persons who might appear and testify that they wished to buy the remaining lands and then proceed to depreciate them by this novel rule, ought to be objects of suspicion to the jury. It would be impossible for any jury by any arithmetical method to weigh the conjectures of such apprehensive persons concerning the possible operation of the sewage system, the operation of which nobody can now know. Especially would such an instruction be improper to be given to appraisers who are to inspect the land and exercise their function of judging the amount of the damage. The instructions granted permitted the respondent to bring before the jury all the facts and circumstances and to weigh them impartially. We repeat this instruction was properly refused.

Since we find no error in either of the matters concerning which error has been assigned, the judgment of the learned court below must be affirmed, with costs, and it is so ordered.

Affirmed.

UNITED STATES, EX REL. EDWARD GANNON, BY NEXT FRIEND, APPELLANT,

v.

THE PRESIDENT AND DIRECTORS OF GEORGETOWN COLLEGE.

UNITED STATES, EX REL. FRANK S. GANNON, APPELLANT,

v.

SAME.

MANDAMUS; TERMINATION OF CONTROVERSY PENDING APPEAL; DISMISSAL OF APPEAL.

1. Where, pending an appeal from a judgment of the trial court, and without fault of the defendant, an event occurs which renders it impossible for this court, if it should decide the case in favor of the plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal.
2. Where, pending appeals from orders of the court below dismissing petitions for mandamus to compel the respondent, a private educational corporation, to reinstate relator's son as a member of the freshman class, from which he had been expelled for absence without leave, the college year ended and the freshman class ceased to exist, its members being advanced to the next higher class, held that it was beyond the power of the court to grant the relief prayed for, and therefore the appeal would be dismissed, without passing upon the question of relator's right to the remedy sought.

Nos. 1670 and 1675. Decided June 13, 1906.

APPEALS by relators from orders of the Supreme Court of the District of Columbia, at Law, Nos. 43,367 and 43,467, dismissing petitions for writs of mandamus. Appeals dismissed.

*Mr. Wilton J. Lambert* for the appellant.

*Mr. George E. Hamilton* and *Mr. M. J. Colbert* for the appellee.

*Mr. Justice McCOMAS* delivered the opinion of the Court:

This question comes before us upon two petitions for mandamus. In the first, filed February 27, 1906, the relator, Edward Gannon, by

his father and next friend, Frank S. Gannon, filed a petition against the president and directors of Georgetown College, and in the second, filed April 11, 1906, Frank S. Gannon, the father of Edward Gannon, filed his petition for mandamus against the same defendant. Both petitions were filed in the Supreme Court of the District of Columbia. Since both petitions are before us, we need not consider whether the petition should have been filed by Frank S. Gannon, the father of Edward Gannon, or by the father as next friend of his son, late a student in Georgetown College, a private corporation in the District of Columbia. There is no material difference between the two petitions. They each state the following matters:

Frank S. Gannon, of New York City, is the father of Edward Gannon, who is 18 years old. In September, 1905, the father sent his son to Georgetown College, where he entered the freshman class. At that time the father paid \$206, wherefor his son was to be furnished a room in the dormitory for the school year, beginning in September, 1905, and ending in June, 1906, the son also to receive the instruction and facilities of education given to the freshmen, the father having agreed to pay the further sum of \$206 about March, 1906, which payment would entitle his son to board and tuition "up to and until the end of the school year in the month of June, 1906." The father's contract was according to the usual terms made by the college.

Thereupon the son became entitled to his room and board and to the educational facilities and privileges given members of the freshman class throughout the college year from September, 1905, to June, 1906, subject to reasonable regulations and restrictions.

About September, 1905, the son entered the college, occupied his room, boarded in the college, and enjoyed all its educational benefits and privileges. He was an orderly and diligent student, maintaining excellent standing in his class and was obedient to the college discipline.

About January 4, 1906, the father requested his son to return to New York on January 7th to be godfather at the baptism of the infant daughter of his brother and to prolong his stay until January 9th in order to be present at the wedding of his only sister. The father requested the president of the college to grant leave of absence from college from the night of Saturday, January 6th, until the morning of Wednesday, January 10th, so that the son might attend both ceremonies. He wrote to the president of the college urging this request. On January 5, 1906, the Rev. D. H. Buel, S. J., president of the college, telegraphed the father that the request for the absence of his son Edward was refused, and that he would explain by letter. On January 6th the father telegraphed President Buel as follows:

"I am sure you would see as I do that Edward's presence here is of the utmost importance if you knew the circumstances. I am obliged to ask you to make an exception in this instance and trust to the future to show that I am right." And on the same day, through his secretary, President Buel sent the following telephone response to the father:

"The president of the college says that he is

very sorry if he displeases you, but he can not bring himself around to agree with your views and to have Edward to go to New York. You will have to withdraw him from the college if you want to do this. Wire or telephone. Edward can leave on the midnight train. The president says that he will be at the college this evening until 7.30."

The father replied to this in writing, in substance saying he was sure he was within his right and that his son was doing right in attending the wedding of his sister and the baptism of his niece. On January 5, 1906, the son applied to Father Lyons, prefect of discipline in the college, who said he had endeavored to persuade the president to recede, but without success, and so at midnight, on Saturday, January 6, 1906, the son took the train for New York. On January 9th, an hour before the wedding, the father received word from President Buel that his son's name had been erased from the books of the college; that the son would not be readmitted, and that his effects had been shipped to New York. On January 10th, the father received a letter which inclosed a statement of account between the college and his son and a check for the money properly due the father and returned to him.

The father by his counsel returned the check, electing to stand upon his contract with the college. His son tendered himself, and now by the petition tenders himself, ready to comply with the terms of the contract and continue his studies and attendance as a member of the freshman class of the college, and the father proffered full compliance in respect of further payments. The president caused the property and effects of the son to be packed and sent to the son in New York City. The father says he consulted several Jesuit Fathers connected with educational institutions conducted by the society and controlled by the same rules and regulations as is Georgetown College, and that these persons characterized the condition attempted to be imposed upon the son as unreasonable. The father had sent four of his seven sons to Georgetown College, and the rest to other Jesuit institutions, and in his petition the father avers that the action of the president was arbitrary, unreasonable, and unjust, and upon information avers that prior to such action of the president the faculty had taken no action adverse to his son. The petitioner says that it is now the middle of the school year; that his son prosecuted his studies with diligence, industry, ability, and success, and that the action of the college, by its president, in expelling his son is a stigma upon the latter and a serious injury to him, and that his son can not enter another institution without losing the college year.

The petitioner therefore prays that the writ of mandamus may issue against the defendant commanding the President and Directors of Georgetown College to restore the son to all the rights he was entitled to as a student of the college and a member of the freshman class.

This cause was submitted and argued June 5, 1906, and the consideration now given it occurs four days thereafter. The college year has ended. That freshman class no longer exists, its members having been advanced to the next higher class. It is beyond the power of this



court, therefore, or of any court, to direct or secure for the petitioner's son the relief prayed for in both of these petitions for mandamus. Therefore we will not decide whether or not the father or the son under these petitions is entitled to this remedy, or if one of them be entitled whether upon the facts of the petitions and respondent's answers such relief should be granted if the court decided it had power.

In *Tennessee v. Condon*, 189 U. S., 64, certain parties by a bill in equity sought to dispossess persons unlawfully holding certain public offices and to secure the induction to such offices of the complainants. It appearing to the Supreme Court that the terms of office of all the relators except the county judge had expired before the cause was argued in the Supreme Court on March 11 and 12, 1903, and that the term of the office of county judge had ended in 1902, the case was disposed of without a decision of the question of importance involved in the litigation and for the following reasons: "If we were to hold that the act could be subjected to the test of the Fourteenth Amendment, and that it could not stand that test, we should do nothing more than reverse the decree below and remand the cause, and as such a judgment would be ineffectual, we must decline to intimate any opinion on the subject.

"The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which can not affect the matter in issue in the case before it. It necessarily follows that when, pending an appeal from the judgment of a lower court and without any fault of the defendant, an event occurs which renders it impossible for this court, if it should decide the case in favor of the plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal." Mr. Justice Gray, *Mills v. Green*, 159 U. S., 651, 653."

In *Jones v. Montague*, 194 U. S., 147, 153, the court approved *Mills v. Green*, and said: "The thing sought to be prohibited has been done, and can not be undone by any order of court. The canvass has been made, certificates of election have been issued, the House of Representatives (which is the sole judge of the qualifications of its members), has admitted the parties holding the certificates to seats in that body, and any adjudication which this court might make would be only an ineffectual decision of the question whether or not these petitioners were wronged by what has been fully accomplished. Under those circumstances there is nothing but a moot case remaining, and the motion to dismiss must be sustained."

And quite recently, in *Security Life Insurance Co. v. Prewitt*, 200 U. S., 446, 449, the court said: "The writ of error in this case was filed January 27, 1905, and the license was granted July 1, 1904, and expired by its terms, if not sooner revoked, on the first day of July, 1905. The permit, even if illegally revoked prior to that time, became a dead letter on July 1, 1905, so far as constituting any authority to the company to remain in the State and do business therein. If the court should now assume to

cancel the revocation it could not thereby restate the permit, which has already expired, and the company would still be without power to do business in the State until another permit should be granted. To adjudge that the old permit remained good until the expiration of the year is to adjudge an abstract question, as no relief can be now awarded concerning it. . . . Since the writ of error was filed the permit has ceased to have any effect, and therefore, an event has occurred which renders it impossible for this court to grant any effectual relief in favor of plaintiff in error. In such case the court will dismiss the writ of error."

Obedient these rulings, we will dismiss this appeal from the judgment of the learned court below in this case. In our opinion, however, we should add that the record in this case shows that Edward Gannon, a student, gained and maintained proficiency in his studies, that he was simply dismissed for absents himself and attending the family gatherings occasioned by the wedding of his sister and the baptism of his niece. The college authorities certify of him that "during his stay at Georgetown College his conduct was most exemplary and his application to his studies all that could be desired." It appears further that father and son naturally wished the absent son to be home and that the father too confidently anticipated acquiescence in his very natural request. It is due to the President of Georgetown College and to that very valuable institution itself to remember that the location of the college at the Capital, which so many people throughout the country visit, caused relatives frequently to withdraw students from their studies for hours or even days until the absenteeism grew to be an abuse and the absence of some students discouraged the teachers and prejudiced the discipline and attendance of other students. It happened that early in the college year the president by letter notified the parents or guardians of all students that in case parents could not bring themselves to accept the view of the president and faculty and their insistence upon the regular and un-failing attendance of students, these authorities preferred to have parents withdraw their sons from Georgetown College. The refusal of the president to permit young Gannon to go to his home on this occasion may be regarded as a strict enforcement of discipline, but it is manifest that the president believed that strict adherence to the new policy against absenteeism under all the circumstances, was to the advantage of the whole student body. It appears that the faculty approved the action of the president. Had we deemed it necessary to decide the case upon the record, we would not have been unmindful that this college is a private corporation and it has discretionary power to regulate the discipline of the student in accordance with the rules and regulations to which the student submitted himself when he entered the college. We think it is better, however to decide only actual controversies by a judgment which can be carried into effect and not to give opinions upon moot questions, and not to declare rules of law which can not affect the matter in issue in the case before us. By no fault of either party the college year has ended before this court

could have intervened if it had determined to do so.

These appeals will be dismissed, and it is so ordered.

Dismissed.

HENRY NELSON, PLAINTIFF IN ERROR,

v.

UNITED STATES.

CRIMINAL LAW; SETTING UP GAMING TABLE; EVIDENCE; PRACTICE.

1. Sections 865 and 866 of the Code each refers to a separate and distinct offense; and proof of a violation of section 866 will not support a conviction upon an information charging a violation of section 865.
2. To warrant a conviction under section 866, the defendant must knowingly have permitted a gambling device to be set up or used for gaming upon premises owned or occupied by him or of which, at the time, he had possession or control.
3. Proof that defendant was present in a pool-room and had therein set up a gaming table held insufficient to show that the premises were owned or occupied by him or that he was in possession and control thereof, especially where the Government affirmatively shows that another person was in possession and control of the pool-room and represented the owner.
4. An exception to the refusal of a motion by the defendant to dismiss the charge against him for insufficiency of the evidence is not waived by his introducing testimony as to the condition of his family and that he had not before been in trouble.
5. That a defendant, in a single instance, knowingly permitted gaming on premises owned or occupied by him or in his possession or control is sufficient to support a conviction under section 866 of the Code.

No. 1857. Decided June 5, 1906.

IN ERROR to the Police Court of the District of Columbia. Reversed.

*Mr. M. T. Chinksaules* and *Mr. A. W. Scott* for the plaintiff in error.

*Mr. D. W. Baker* and *Mr. Stuart McNamara* for the defendant in error.

Mr. Justice DUELL delivered the opinion of the Court:

This is a writ of error to the Police Court of the District of Columbia to review a judgment of that court finding the plaintiff in error guilty upon an information filed against him charging him with a violation of section 866 of the District Code.

The information charged that—

"On the first day of June, in the year of our Lord, one thousand nine hundred and five, and on divers other days and times between that day and the day of filing the information, with force and arms, at the District aforesaid, and within the jurisdiction of this court, in a certain house, building, and premises, the said house, building, and premises then and there being in the possession and under the control of the said Harry Nelson, did knowingly permit to be set up and used a certain gaming table, for the purpose of gaming, at which there were bet and wagered money and other things, against the form of the statute in such case made and provided, and against the peace and government of the United States of America."

The evidence adduced by the Government showed that on the night of March 17, 1906, the defendant was in a certain pool-room situate in the District of Columbia shooting crap; that the defendant cut the game every first and third

pass for different sums of money, which he put in his pocket; that the game was played in the rear part of the pool-room, "and that one Jesse Johnson was in possession and control of said pool-room, representing the owner thereof, and was at the time present in the front part of the said pool-room and did go back from time to time and looked on and watched the game."

It further appeared that the defendant had not been seen at the pool-room at any time other than the night in question. No further evidence was offered by the Government.

The defendant then moved the court to dismiss the charge and to discharge the defendant from custody, on the ground that the evidence did not disclose, and that the Government had failed to prove that the pool-room where the game was carried on was in possession and under the control of the defendant. This motion was overruled by the court and an exception duly noted.

The defendant then called his sister as a witness, who testified that he was married; had two small children; that his wife was sick, and that he had never been in trouble before. Defendant then moved the court to discharge him from custody, on the ground that one act would not make him guilty of the offense charged in the information. This motion was overruled and an exception duly noted.

The court adjudged the defendant guilty and sentenced him to pay a fine of \$50; in default, to serve three months in the District jail; whereupon a writ of error was sued out to remove the case to this court upon the exceptions taken at the trial.

The errors assigned are three-fold but they raise but two questions.

The first being that the court erred in not granting the motion to dismiss the charge and discharge the defendant from custody upon the ground that the evidence offered by the Government failed to prove that the room where the game was played was in the possession or under the control of the defendant—that it was insufficient to prove the charge as alleged in the information.

And the second being that it was error to hold that one act constituted the offense alleged in the information.

Before considering the alleged errors it may be said that section 866 of the Code is one of four—the others being 865, 867, 868—relating to gaming within the District of Columbia. Section 865 is intended to reach and punish those who set up or keep the gaming table. It provides in substance that whoever shall in the District set up or keep any gaming table, etc., for the purpose of gaming, or shall induce, entice, or permit any person to play or bet at or upon the gaming table or gaming device, shall, upon conviction, be subject to a certain penalty or punishment.

Section 866 is as follows:

"Whoever in the District knowingly permits any gaming table, bank, or device to be set up or used for the purpose of gaming in any house, building, vessel, shed, booth, shelter, lot, or other premises to him belonging or by him occupied, of which at the time he has possession or control, shall be punished by imprisonment in the jail for not more than one year or by a

fine not exceeding five hundred dollars, or both."

Each section refers to a separate and distinct offense. One makes it unlawful to set up a gaming table, the other unlawful to knowingly permit some other person to set up such a table under certain conditions.

Section 867 need not be considered.

Section 868 provides that the court shall construe the preceding sections liberally, so as to prevent the mischief intended to be guarded against.

That the evidence was sufficient to show that the defendant had violated section 865 by setting up a gaming table is abundantly proven. As the information charges him with an offense not referred to in section 865, but with the offense set out in section 866, the evidence, in order to uphold the conviction under the latter section, must show that that section was violated by the defendant. It is contended on the part of the Government that weight should be given to section 868, which requires that the preceding sections shall be liberally construed. It can hardly be maintained, even conceding that that section is to be given any weight, that evidence showing or tending to show that one section may have been violated, warrants a conviction of an offense set forth in another section unless it shows that the defendant has violated such other section upon which the information is founded. This being so, it is necessary to consider whether the testimony was sufficient to warrant a conviction and whether the question of its insufficiency was properly raised in the court below.

1. It is urged as the first error that the court should not have overruled the motion to dismiss the charge and discharge the defendant from custody. That motion was made when the Government rested, and was based upon the ground that the evidence did not disclose, and that there was no proof that the place where the gaming was going on was in the possession or under the control of the defendant.

In order to warrant a conviction under section 866, it is necessary that a defendant shall knowingly permit a gambling device to be set up or used for the purpose of gaming upon premises owned or occupied by him, or of which at the time of the commission of the offense he has possession or control. In the case at bar it is not contended that the premises upon which the alleged offense was committed belonged to the defendant, or that it was occupied by him other than that he was present in the room and had therein set up a gaming table. On the contrary, it affirmatively appears that the defendant was never seen at this pool-room at any other time than the single night in question. Nor is there any evidence that he was "in possession or control" of the room within the definition properly applicable to those words as used in the section. Possession in law, as that term is used in the section, must mean some right or power over or in the premises for the time being at least. And to have control of the premises must mean also the right to exercise some power relative thereto. The evidence not only fails to show that the defendant at the time of the commission of the alleged offense had possession of or control of the room,

but the Government affirmatively showed that another, one Jesse Johnson, was in possession and control of the pool-room and that he represented its owner. The authorities cited by the Government to show that the defendant's presence in the room was tantamount to its possession and control by him have been examined, but do not seem to be in point. It may be admitted that it is not necessary that the defendant should have had permanent possession of the room or that he should have been the lessee or keeper of the room; and it may be further admitted that he would have been liable as an agent, or servant, or as temporarily in charge of the room. The authorities do not seem to go beyond this. But the difficulty with the case is that the evidence utterly fails to show any such agency, servitude, or temporary charge of the premises. The evidence simply showed that the defendant had set up a gaming table in the room—an offense provided for by section 865. It failed to show that the room where the gaming table was set up was under the possession of or in the control of the defendant, as that term is used in section 866. There was a fatal variance between the allegations of the information and the proof offered.

It is, however, contended upon the part of the Government that the defendant lost the advantages of his motion to dismiss the charge and for his discharge by adducing testimony after such motion was denied. Had such testimony offered on behalf of the defendant been of a nature to show that he had abandoned the motion, and had the evidence given related to the merits of the case, the contention would be entitled to more weight.

But the testimony given had no bearing upon the question at issue for, as we have noted, it related to the condition of the defendant's family, and that he had never been in trouble before. It did not negative or strengthen the facts proven by the Government. It had nothing to do with the issue. It could only serve to lead the court to impose a light punishment.

It would be a harsh rule to apply, provided the defendant was found guilty, to say that a defendant by the introduction of such testimony waived a motion that he be discharged from custody and the charge dismissed because the evidence was insufficient to prove the charge.

2. It is also urged on behalf of the defendant that the court erred in holding that one act was sufficient to constitute the offense alleged in the indictment. This may be disposed of in a single word. Had the Government shown that the defendant had once knowingly permitted gaming on premises owned or occupied by him and at the time in his possession or control, it would have been sufficient to support a conviction. The section imposes no condition as to the repetition of the offense. To knowingly permit an offense of this nature to be committed once is clearly sufficient. There would have been no reason for Congress to provide that the act should not be punished unless it was repeated. We do not consider this assignment well taken.

We are constrained, however, to hold that there was no evidence to support the allegations of the information that the plaintiff in error

was guilty of knowingly permitting a gaming table to be set up on premises owned or occupied by him, or which at the time of the offense were in his possession or under his control.

For the reason that the record fails to show any violation of section 866 of the Code upon which the information was based, the decision of the Police Court was erroneous, and its judgment must be reversed, and the cause remanded, with direction to discharge the defendant. It is so ordered.

Reversed.

#### Notes of Recent Decisions.

**Wills.**—The interest of a legatee is held, in *Re Holbrook* (Pa.), 2 L. R. A. (N. S.), 545, to cease at marriage, under a will giving one the income of a fund "during the term of her natural life, or so long as she remains unmarried," with a gift over on her death or marriage.

A bequest to each of the testator's children is held, in *Pimel v. Betjemann* (N. Y.), 2 L. R. A. (N. S.), 580, to have no application to a child who died before the will was made, so as to create an interest upon which a statute to prevent the lapsing of legacies can operate.

The right of the estate to contest a will merely because there is a probability that some heir may fail to appear and claim the property, so as to permit proceedings to declare an escheat, and that the heir may fail to appear within the statutory period thereafter to claim the property, so that the State's title may become absolute, is denied in *State v. Superior Court* (Cal.), 2 L. R. A. (N. S.), 643.

**Sales.**—Horses, wagons, and harness of a livery-stable keeper are held, in *Everett Produce Co. v. Smith* (Wash.), 2 L. R. A. (N. S.), 331, not to be within a statute requiring the purchaser of "any stock of goods, wares, or merchandise in bulk" to take a statement under oath of the creditors of the seller. The question of statutory requirements on sale of stock of goods in bulk is the subject of a note to this case.

Tender by the seller is held, in *Bell v. Hatfield* (Ky.), 2 L. R. A. (N. S.), 529, not to be necessary in order to hold the buyer liable for breach, where the latter failed to designate the day of delivery, as required by contract, and was not present at the place of delivery called for by the contract during the time delivery could have been called for according to its terms.

**Conditional Sales.**—The right of a seller under a conditional sale to recover the unpaid purchase price, notwithstanding the destruction of the property without the purchaser's fault before the price fell due, is affirmed in *Lavalley v. Ravenna* (Vt.), 2 L. R. A. (N. S.), 97.

Attaching a draft for the purchase price to the bill of lading, and forwarding it for collection, are held, in *Greenwood Grocery Co. v. Canadian County Mill & E. Co.* (S. C.), 2 L. R. A. (N. S.), 79, to reserve title in the consignor, notwithstanding that the bill of lading is in the name of the consignee, and, if the draft is excessive, the consignee does not acquire the title by tendering the correct amount due.

**Insurance.**—The liability of officers of a mutual fire insurance company to a member for the amount due him for a loss because they organized the members of the branch which was liable for the loss into a new company, leaving the branch in a state of suspended animation, is denied in *Perry v. Farmers' Mut. F. Ins. Asso.* (N. C.), 2 L. R. A. (N. S.), 165.

Death by asphyxiation from the accidental inhalation of gas while asleep is held, in *Travelers' Ins. Co. v. Ayers* (Ill.), 2 L. R. A. (N. S.), 168, not to be within an accident insurance policy exempting the insurer from liability for death resulting directly or indirectly from any gas or vapor.

That the removal of a family from a house to a near-by village was due to sickness in the family, and accompanied with an intention of returning when the sick recovered, was held, in *Knowlton v. Patrons' Androscooggin Mut. F. Ins. Co.* (Me.), 2 L. R. A. (N. S.), 517, not to prevent vacancy within the meaning of an insurance policy, notwithstanding that the insured was at the house nearly every day.

Reformation of a policy is held, in *Ætna Ins. Co. v. Brannon* (Tex.), 2 L. R. A. (N. S.), 548, not to be necessary where, without the knowledge of the insured, it located the property in a building other than that designated by him.

**Mortgages.**—The lien of a mortgage on the property of an assignor is held, in *McDaniel v. Osborn* (Ind.), 2 L. R. A. (N. S.), 615, not to be displaced by a statute providing that all debts due for labor shall, when the debtor's property passes into the hands of an assignee, be paid in full before paying any other except legitimate costs and expenses.

A deed executed by the borrower at the time a loan is made and a note and mortgage delivered as security therefor, to be placed in escrow for delivery to the mortgagee in case of default of payment of debt, is held, in *Plummer v. Isle* (Wash.), 2 L. R. A. (N. S.), 627, to be itself a mortgage, and to continue as such after default, the surrendering of the securities, and the delivering and recording of the deed.

**Master and Servant.**—Complaint to the authorities that coal furnished was bad for making steam, without anything to show that it was unsafe or dangerous to handle, was held, in *Vissman v. Southern R. Co.* (Ky.), 2 L. R. A. (N. S.), 469, inadmissible in an action against a railroad company for injuries to an employee in attempting to break a lump of coal containing rock and slate.

An employer maintaining a negligently constructed elevator is held liable, in *Siegel, C. & Co. v. Treka* (Ill.), 2 L. R. A. (N. S.), 647, for injuries to an employee, which would not have occurred in the absence of such negligence, although the act of a fellow employee brought the injured person into contact with the defect.

**Subrogation.**—Executing a note for another's debt is held, in *Ft. Jefferson Improv. Co. v. Dupoyster* (Ky.), 2 L. R. A. (N. S.), 263, to be equivalent to a payment in cash for purposes of subrogation.

**Railways.**—The right of a railroad company to use electricity as a motive power is upheld in *Howley v. Central Valley R. Co.* (Pa.), 2 L. R. A. (N. S.), 138, although the charter is silent on the subject of motive power, and, at the time of the passage of the statute providing for incorporation, electricity was unknown as a motive power.

It is held, in *Louisville, H. & St. L. R. Co. v. Hathaway's Admr.* (Ky.), 2 L. R. A. (N. S.), 498, that trainmen are not bound to stop a train as soon as an object on the track, seen by them, "Looks like a man," but that they may wait until the fact that it is a man appears.

**Specific Performance.**—A provision for liquidated damages in case of a breach of contract for exchange of lands is held, in *Koch v. Streuter* (Ill.), 2 L. R. A. (N. S.), 210, not to defeat a right for specific performance, where the provision was intended merely as security for performance.

Failure to specify the time within which a contract for sale is to be performed is held, in *Ullsperger v. Meyer* (Ill.), 2 L. R. A. (N. S.), 221, not to defeat its specific performance.

**Partnership.**—The right of partnership creditors to attack a conveyance of partnership property by an insolvent member of the firm in discharge of his individual debt is denied in *First Nat. Bank v. Brubaker* (Iowa), 2 L. R. A. (N. S.), 256, at least when the conveyance is made with the consent of other members of the firm.

**Master and Servant.**—A servant is held, in *Ellis v. Southern R. Co.* (S. C.), 2 L. R. A. (N. S.), 378, to be personally liable to third persons when his wrongful act in the course of his employment, whether of nonfeasance or misfeasance, is the direct and proximate cause of their injuries.

**Party Wall.**—A contract to pay one-half the value of a party wall when the promisor made use of it, expressed to be binding upon the heirs and assigns of the parties, is held, in *Southworth v. Perring* (Kan.), 2 L. R. A. (N. S.), 87, to create a covenant running with the land of each party.

**Executors.**—The power of an executor, under a direction in a will to sell real estate and distribute the proceeds, is held, in *Starr v. Willoughby* (Ill.), 2 L. R. A. (N. S.), 623, not destroyed by an order of court declaring the estate settled, and discharging him as executor.

**Nuisances.**—The careful operation of a brick kiln on land is held, in *Phillips v. Lawrence Vitrified Brick & T. Co.* (Kan.), 2 L. R. A. (N. S.), 92, not to render the owner liable to adjoining property owners as for a nuisance, although slight and trivial injury is done to their property by smoke, dust, and cinders.

**Innkeepers.**—An innkeeper was held liable, in *Clark v. Ball* (Colo.), 2 L. R. A. (N. S.), 100, for valuables entrusted to his partner by a guest and misappropriated after the owner had ceased to be a guest.

The refusal of the agent at the intermediate terminal to indorse a return-trip ticket, which indorsement, according to the terms of the ticket, is necessary to validate it, is held, in *Texas & P. R. Co. v. Payne* (Tex.), 70 L. R. A., 946, not to be a final breach of its contract, by the carrier, so as to preclude recovery by the passenger of any damages that may subsequently accrue, and, where the passenger is ejected from the train when attempting to use the ticket, under circumstances of humiliation, it is held that he may recover damages therefor.

A bank sends to another bank, which is its regular correspondent, for collection, a draft indorsed for collection and credit, is held, in *Garrison v. Union Trust Co.* (Mich.), 70 L. R. A., 615, to have no right to assert its title against the lien upon the proceeds to which a third bank, to which the draft is forwarded for collection, is entitled in the ordinary course of business to balance its account against the intermediate bank.

An agreement by an applicant for admission to an old folks' home to deliver to it all property which he may subsequently become the owner of, in consideration of maintenance during life, is held, in *Baltimore Humane Soc. v. Pierce* (Md.), 70 L. R. A., 485, to be void as against public policy. The question of validity of agreement to transfer future-acquired property in consideration of maintenance is treated in a note to this case.

A manufacturer who fraudulently uses and conceals defective material in an implement is held, in *Kuelling v. Roderick Lean Mfg. Co.* (N. Y.), 2 L. R. A. (N. S.), 308, to be liable for injury caused thereby, although the implement had passed through the hands of wholesale and retail dealers, so that there was no privity of contract between the manufacturer and the person injured.

The dismissal of an appeal for failure to comply with a mandatory statute as payment of the register's fee for his return is held, in *Lohrstorfer v. Lohrstorfer* (Mich.), 70 L. R. A., 621, to confer a vested right which can not be impaired by a subsequent statute permitting the reinstatement of appeals within a specified time upon proof that the fee has been paid in the interim.

In case of the burning of cotton on a railroad platform, in the course of delivery, it is held, in *Lehman, S. & Co. v. Morgan's Louisiana & T. R. & S. S. Co.* (Mich.), 70 L. R. A., 562, that the carrier is bound to prove the origin of the fire, and that it was purely accidental and impossible to prevent.

The right of a court, in an action for divorce, to punish a contempt in refusing to pay alimony by striking the defendant's answer from the record, or refusing to permit him to plead further, in a case where he has voluntarily absented himself from the territory for the purpose of avoiding contempt proceedings for failure to pay such alimony, is sustained in *Bennett v. Bennett* (Okla.), 70 L. R. A., 764.

The right of a blind person to transportation upon a railroad upon tender of fare, without an attendant, is upheld in *Illinois C. R. Co. v. Smith* (Miss.), 70 L. R. A., 642, if, as matter of fact, he is competent to travel alone without requiring other care than that which the law requires the carrier to bestow upon all its passengers alike.

That it is not negligence, as matter of law, for a passenger who is upon a train so crowded that he can not find a seat, and becomes sick, because of lack of proper ventilation and tobacco smoke, to seek relief upon a platform when unable to reach a window, is declared in *Morgan v. Lake Shore & M. S. R. Co.* (Mich.), 70 L. R. A., 609.

A statute requiring every member of a firm engaged in the plumbing business to be a registered plumber, whether his duties require him to have a knowledge of that trade or not is held, in *Schnaier v. Navarre Hotel & I. Co.* (N. Y.), 70 L. R. A. 722, to be an unconstitutional interference with liberty and property.

Requiring the substitution of water-closets for school sinks in tenement houses is held, in *Tenement House Department v. Moeschon* (N. Y.), 70 L. R. A., 704, to be a proper exercise of the police power.

#### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

#### Legal Notices.

##### FIRST INSERTION.

**A. H. Bell, Attorney**

**Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John D. J. O'Connor, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of August, 1906. ROBERT LEE MONTAGUE, 617 La. ave. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court, No. 18,967. Administration. [Seal.] 84-81

#### Legal Notices.

**Wilton J. Lambert, Ralston & Siddons, George F. Williams, and Alex. H. Bell, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Laura G. Robinson v. Francis H. Stephens et al.**  
Equity No. 23,121.

**The Central National Bank v. Walter F. Hewett et al.**  
Equity No. 24,748.

Upon consideration of the reports of the trustees in the above entitled causes and the petition of Ben Schwartz in Equity No. 24,748, it is, this 6th day of August, A. D. 1906, ordered, adjudged, and decreed that the sale of lots 78, 79, 80, and 81, in Robert C. Hewett's subdivision of lots in square 448, as per plat recorded in liber 12, folio 25, of the records of the surveyor's office of the District of Columbia, reported by said trustees to Ben Schwartz for eleven thousand three hundred and seventy-five dollars (\$11,375), be finally ratified and confirmed, unless cause to the contrary be shown on or before the 10th day of September, 1906; and provided a copy of this order be published once a week for three successive weeks before said day in The Washington Times, The Washington Law Reporter, and the Washington Post. By the Court: JOE BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 84-81

**Walter C. Clephane, Solicitor**

**In the Supreme Court of the District of Columbia.**  
**Henry A. Vieth v. City and Suburban Railway Co. et al.**  
No. 23,249. Equity Doc. 58.

The object of this suit is to compel a conveyance to the complainant of the real estate hereinafter described, and, if necessary, to substitute a trustee or trustees to make such conveyance; also to secure a mandatory injunction requiring the City and Suburban Railway Company to abandon its occupancy of said real estate and to pay complainant for its illegal use thereof. Said real estate is situated in the County of Washington, in the District of Columbia, and is described as follows, to wit: So much of that strip of land designated as Rhode Island avenue as extended by the Commissioners of the District of Columbia and lying between the lines of said avenue if extended so far, being in the center of said avenue and in width sixty-four (64) feet, and as long as the portion of said avenue extended is enclosed within the metes and bounds of the property known as lot six (6) in John B. Kibbey's subdivision of his farm called "Granby," situate on Brentwood road in the county and District aforesaid, according to a plat attached to and recorded with a deed in liber, J. A. S., No. 84, at folio No. 377, one of the land records of the District of Columbia. On motion of the complainant, it is, this 21st day of August, 1906, ordered that the defendants, Chauncey C. Bestor, Mary M. Potts, Anna B. Doyle, Ellen Berry, and William Kealey Schoepf, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post before said day. WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 84-81

**Wm. D. Hoover, Attorney**

**Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Richard Crowther, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 18th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of August, 1906. THE NATIONAL SAFE DEPOSIT, SAVINGS AND TRUST COMPANY, of the District of Columbia, by Wm. D. Hoover, Second Vice-President. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,961. Administration. [Seal.] 84-81

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W.

**Legal Notices.**

**Alex. H. Bell, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Patrick Crowe, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of August, 1906. JOHN W. CROWE, 704 T St. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,609. Administration. [Seal.] 34-St

**W. C. Martin, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Solomon G. Brown, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 9th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of August, 1906. LUCINDA A. BROWN, Hillsdale, D. C. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,851. Administration. [Seal.] 34-St

[Filed August 20, 1906. J. R. Young, Clerk.]

**M. J. Keane and D. W. O'Donoghue, Solicitors**  
**In the Supreme Court of the District of Columbia,**  
**Holding Equity Court.**  
**Peter A. Drury et al. v. The Unknown Heirs, Alienees,**  
**and Devises of George Peter, Deceased. Equity,**  
**No. 25,273. Dec. 56.**

The object of this suit is to perfect the title of the following-described property located in the city of Washington, District of Columbia, and known on the ground plan or plat of said city as the east one-half of lot twenty-five (25), in square one hundred (100), and more particularly described as follows: Beginning for the same at the northeast corner of said lot and running thence west twenty-five (25) feet, five and one-half (5½) inches; south one hundred (100) feet, nine and one-half (9½) inches; thence east along the rear of lot twenty-five (25) feet, five and one-half (5½) inches; thence north one hundred (100) feet, nine and one-half (9½) inches to the beginning. On motion of the complainants, by their solicitors, Michael J. Keane and Daniel W. O'Donoghue, it is, this 20th day of August, 1906, ordered that the defendants, the unknown heirs, alienees, and devises of George Peter, deceased, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of the period of publication hereinafter described; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and The Washington Post once a week for three successive weeks before said return day. WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 34-St

**Wm. D. Hoover, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary M. Turner, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of August, 1906. THE NATIONAL SAFE DEPOSIT SAVINGS AND TRUST COMPANY, of the District of Columbia, by Wm. D. Hoover, Second Vice-President. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,761. Administration. [Seal.] 34-St

**Legal Notices.**

**Ralston & Siddons, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Francis H. Smith, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 21st day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of August, 1906. E. QUINCY SMITH, Bond Building. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,876. Administration. [Seal.] 34-St

**Charles W. Darr, Attorney**  
**In Justice's Court of the District of Columbia,**  
**Subdistrict No. 3.**  
**Dennis W. Magrath, Plaintiff, v. Emory B. Bushardt,**  
**Defendant. No. 8961.**

The object of this suit is to recover two hundred and forty-two dollars and fifty cents, with interest and costs of suit, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 21st day of August, 1906, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. THOS. H. CALLAN, Justice of the Peace, 627 F St. N. W. [Seal.] 34-St

**George Francis Williams, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of Parthenia Jones, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 30th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 30th day of August, 1906. MILES JONES, FLOYDE E. DAVIS. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,359. Administration. [Seal.] 34-St

**Frank W. Hackett, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Samuel Donelson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of August, 1906. JESSIE LOUISE DONELSON, 1761 Church street. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,849. Administration. [Seal.] 34-St

**SECOND INSERTION.**

**George E. Fleming, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration d. b. n. c. t. a. on the estate of Charles Anthony Schott, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of August, 1906. MINNA SCHOTT, 212 First St. S. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 10,326. Admn. [Seal.] 35-St



**Legal Notices.****Philip S. Ball, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Sarah Craikshank, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of August, 1906. KATE CRUIKSHANK, 3143 P st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,737. Administration. [Seal.] 33-St

**Robert S. Hume, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Frank Hume, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of July, 1906. EMMA P. HUME, 1235 Mass. ave., N.W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,817. Administration. [Seal.] 33-St

**J. J. Waters, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Joseph Fearon, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of August, 1906. SARAH J. FOINTON, 120 Seaton st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,786. Administration. [Seal.] 33-St

**Robert S. Hume, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Walton Goodwin, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of August, 1906. BILLY W. WALKER GOODWIN, 1516 F st. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,823. Administration. [Seal.] 33-St

**F. G. Coldren, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Michael O'Hearn, Deceased.  
No. —. Administration Docket —.**

Application having been made herein for letters of administration on said estate, by William O'Hearn, it is ordered, this 11th day of August, A. D. 1906, that Benjamin Vandervoort and Mary Frances Vandervoort, and all others concerned, appear in said court on Friday, the 21st day of September, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. JOB BARNARD, Justice. A true copy. Attest: WM. C. TAYLOR, Deputy Register of Wills. 33-St

**Legal Notices.****Chas. F. Benjamin, Solicitor****In the Supreme Court of the District of Columbia.  
Denis E. Conroy v. Unknown Heirs of Charles Carroll, Junior. Equity No. 26,307. Docket 58.**

The object of this suit is to establish title by long and adverse possession to original lot 8, in square numbered 599, of the city of Washington, D. C., situate at the northeast corner of Second and P streets southwest. On motion of the complainant, and it appearing that diligent efforts have heretofore been made to find the defendants hereto, it is, this 14th day of August, 1906, ordered that the defendants, being the unknown heirs, devisees, and allenees of Charles Carroll, Junior, who owned the said realty in or about the year 1794, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published in The Washington Law Reporter and The Washington Times once a week for three successive weeks before the return day herein named. By the Court: JOB BARNARD, Justice. A true copy. Test: John R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 33-St

**Wilton J. Lambert, Attorney****In the Supreme Court of the District of Columbia,  
Holding a Special Term for Probate Business.  
In re the Estate of Rocco Brignole, Deceased.  
Probate, No. 13,885.**

Application having been made herein for the probate of the last will and testament of said deceased, bearing date the 2d day of March, A. D. 1906, and for letters testamentary on said estate, by Louise Brignole, the executrix named therein, and summons having been issued against the parties hereinafter mentioned, and having been returned not to be found as to each of them, it is, this 17th day of August, 1906, ordered that Antonio Brignole, Bartholamo Brignole, Ambrogio Brignole, Pietro Brignole, Maria Cuari, Augustina Brignole, Annunziata Brignole, and Anna Fuguzzi, and all others concerned, appear in said court on Monday, the 24th day of September, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice be published in The Washington Law Reporter and The Washington Times once for three successive weeks before the return day, the first publication to be not less than thirty (30) days before said return day. By the Court: WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 33-St

**Clarence E. Dawson, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of John W. Frost, Deceased.  
No. 13,848. Administration Docket —.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Charles P. Grandfield, it is ordered, this 16th day of August, A. D. 1906, that Charles D. Frost, and all others concerned, appear in said court on Wednesday, the 19th day of September, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. JOB BARNARD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 33-St

**Robinson White, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Andrew Wunder, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of August, 1906. ELIZABETH WUNDER, 212 7th st. S. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,839. Administration. [Seal.] 33-St

**Legal Notices.****L. Melendez King, Solicitor****In the Supreme Court of the District of Columbia.****Mamie B. May, Richard M. May, and Turula Cunningham, Complainants, v. William May and Albert May, alias Huff, Respondents. Equity, No. 28,369.**

On motion of complainants, by their solicitor, L. Melendez King, it is, this 10th day of August, A. D. 1906, ordered that the defendants, William May and Albert May, alias Huff, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter, The Washington Post and The Evening Star prior to said return day, and the order passed herein on August 8th, 1906, is for naught held. The object of this suit is to make partition by sale of the following-described real estate in the city of Washington, District of Columbia, to wit: Sublot lettered "F" in square numbered five hundred and seventy-seven (577), belonging to the estate of Felix May, deceased, to divide the proceeds thereof among the heirs of said

[Seal] Felix May, and to appoint trustees therefor.  
**JOB BARNARD, Justice. A true copy. Test:**  
**J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk.**

32-3t

**Geo. Francis Williams, Attorney****Supreme Court of the District of Columbia, Holding Probate Court.****Estate of Thomas F. Corridon, Deceased.****No. 13,806. Administration Docket 85.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate by Margaret O'Connell, it is ordered, this 14th day of August, A. D. 1906, that Josephine Corridon, Nellie Mattson, Kathryn Corridon, Philip Corridon, and Mary Corridon, and all others concerned, appear in said court on Monday, the 17th day of September, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be

[Seal] not less than thirty days before said return day. **JOB BARNARD, Justice. Attest: WM. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.**

32-3t

**THIRD INSERTION.****Edwin Forrest, Attorney****Supreme Court of the District of Columbia, Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Daniel O'Brien, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 25th day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 25th day of July, 1906. **MARY E. O'BRIEN, 1209 Princeton st.; JOHN E. McNALLY, 813 1st N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,068. Adm. [Seal.]**

32-3t

**Lester & Price, Attorneys****Supreme Court of the District of Columbia,****Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Bernard F. Ruppert, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of August, 1906. **HENRY J. RUPPERT, 920 O st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,854. Administration. [Seal.]**

32-3t

**Legal Notices.****Wm. A. McKenney, Attorney****Supreme Court of the District of Columbia, Holding Probate Court.****Estate of Fannie Bryan, Deceased.****No. 13,804. Administration Docket.—**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by the American Security and Trust Company, the executor named in said will, it is ordered, this 8th day of August, A. D. 1906, that Augustus R. Bryan, and all others concerned, appear in said court on Tuesday, the 11th day of September, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in "The Washington Law Reporter," "The Washington Post," and "The Evening Star" once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] **JOB BARNARD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court.**

32-3t

**Charles W. Main, Solicitor****In the Supreme Court of the District of Columbia, Ex Parte in the Matter of the Petition of Charles****Edmund Mills. In Equity, No. 26,441.****ORDER OF PUBLICATION.**

The object of the petition in the above-entitled case is to obtain a decree changing the surname of the petitioner from Mills to Palmer. The petition states that the petitioner was born in Baltimore, Maryland, in the year 1878; that his father, Charles Mills, died in the year 1890; that his mother, Katherine Mills, married one John Palmer in Baltimore, Maryland, in the year 1881, and that they removed to Washington, District of Columbia, sometime during said year and have resided continuously in said District since then; that the petitioner has lived and resided with his stepfather, John Palmer, since his (Palmer's) marriage with Katherine Mills, and that petitioner has always been known among his acquaintances and associates as Charles Edmund Palmer; that petitioner desires that his surname Mills shall be changed to Palmer in order to have uniformity in the family name, and because it will be beneficial to him in his business and in many other respects. It is thereupon, this 23d day of July, A. D. 1906, ordered by the Supreme Court of the District of Columbia, holding an equity term, that the petitioner cause a copy of this order, with the object and substance of the petition, to be inserted in The Washington Post and The Evening Star, two newspapers of general circulation published in the District of Columbia, once a week for three successive weeks before the 30th day of August, 1906, giving notice to whom it may concern to be and appear in this court, in person or by solicitor, on or before the 30th day of

August, 1906, to show cause, if any there be, why a decree should not pass as prayed.

[Seal] **ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk.**

32-3t

**W. A. McKenney, Attorney****Supreme Court of the District of Columbia,****Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary Frances Waite, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 31st day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of August, 1906. **MORRISON R. WAITE, of Cincinnati, Ohio; AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,856. Administration. [Seal.]**

32-3t

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WASHINGTON, D. C. - - - - AUGUST 31, 1906

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### Street Railways—Injury to Passenger.

In the case of *Indiana Traction Co. v. Jacobs*, decided June 27, 1906, by the Supreme Court of Indiana, the action was against a street railroad company to recover for injuries to a passenger. The complaint alleged that defendant negligently and carelessly failed to provide a platform or safe and convenient place and means of leaving the car at the point where it was stopped for plaintiff to alight, and that it negligently failed to stop the car at the usual place, but ran it to a point where there was a distance of about two or three feet from the step to the ground, negligently informed plaintiff when the car stopped that she had arrived at her destination, and failed to assist her in alighting. It was held that in respect of the failure to provide a platform in the street and in running the car beyond the usual place, the complaint showed no cause of action, but that the remaining allegations taken together constituted a showing of negligence. A passenger on a street car has a right, declares the court, when the car stops for him to alight, to assume that the car has been stopped at a place where, by the exercise of due care, he may alight in safety. The court further held that in an action for personal injuries the aggravation of an existing condition is not special damages and need not be specially pleaded in order to admit evidence thereof.

### Homicide—Neglect of Husband to Furnish Proper Medical Attendance to Wife.

In *Westrup v. Commonwealth*, decided May 30, 1906, by the Supreme Court of Kentucky, and reported in the *Central Law Journal*, it is held that where a husband neglects to provide necessities for his wife or medical attention in case of her illness, he will be guilty of involuntary manslaughter in the event of her death, if she was helpless and unable to appeal elsewhere for aid, and her death, although not intended nor anticipated by him, was the natural and reasonable consequence of his negligence. The judgment of conviction was, however, reversed for insufficiency of the evidence.

### Assistant Corporation Counsel Andrew B. Duvall.

Upon the recommendation of Corporation Counsel Edward H. Thomas, the Commissioners of this District have appointed Mr. Andrew B. Duvall, Jr., as an assistant corporation counsel. Mr. Duvall is one of the best known of the younger members of the bar of this District, and during a comparatively brief career at the bar has won recognition by his ability as a lawyer. He is a son of former Corporation Counsel Andrew B. Duvall, whose sudden death in October, 1905, was a shock to the community he had served so well and faithfully. Mr. Duvall will have especial charge of proceedings for the condemnation of lands for the purposes of alleys, etc., provision for which was made by Congress at its recent session. He has been the recipient of congratulations from numerous friends, who are confident he will discharge the important duties of his new position with ability.

### Liability of Undiscovered Principal.

The recent case of *Lindquist v. Dickson*, decided by the Supreme Court of Wisconsin, was an action to recover from the defendant as an undiscovered principal upon a contract made by her husband for decorating and repairing her house. It was held that where a person contracts with another who is in fact an agent of an undiscovered principal, and, after learning all the facts, brings an action on the contract and recovers judgment against the agent, such judgment will be a bar to an action against the principal, but that an unsatisfied judgment against the agent is not a bar to an action against the undiscovered principal when discovered if the plaintiff was ignorant of the facts as to the agency when he prosecuted his action against the agent. The court said that it is not necessary to establish an alleged agency by direct evidence, but that it may be established by circumstances, such as the relation of the parties to each other and their conduct with reference to the subject-matter of the contract.

# Court of Appeals of the District of Columbia.

WINSLOW HART REAVES, APPELLANT,

v.

FREDERICK C. AINSWORTH ET AL.

CERTIORARI; MILITARY TRIBUNALS; JURISDICTION OF COURTS TO REVIEW PROCEEDINGS.

The Supreme Court of the District of Columbia is without jurisdiction to grant a writ of certiorari to review the proceedings of a board of examination, convened pursuant to the authority conferred on the President by the act of Congress of October 1, 1890 (26 Stat., 562), to determine the fitness for promotion, under the provisions of that act, of an officer of the United States Army.

No. 1859.

APPEAL by petitioner from an order of the Supreme Court of the District of Columbia, at Law, No. 48,002, dismissing a petition for a writ of certiorari. Affirmed.

Mr. H. P. Gatley and Mr. A. S. Bacon for the appellant.

Mr. D. W. Baker and Mr. Stuart McNamara for the appellees.

Mr. Justice DUELL delivered the opinion of the Court:

This appeal is taken from an order of the Supreme Court of the District of Columbia granting appellees' motion to supersede a writ of certiorari granted ex parte, requiring appellees to produce in court certain special orders of the War Department, known as numbers one hundred and eleven, one hundred and fifteen, and one hundred and eighty-six, and all reports of proceedings had thereunder upon the examination of the appellant on the 23d and 24th days of May, 1905, and on the 21st and 23d days of August, 1905, by the board of examination convened by the said orders to determine his fitness for promotion in the regular army under the provisions of the act of Congress approved October 1, 1890.

This writ ran to the appellee, Ainsworth, the military secretary. A motion to quash the writ was filed, and the case came on for hearing upon the petition. The writ of certiorari issued thereon and the motion to quash said writ was argued and submitted to the court, with the result that the court (the question of discretion not being considered) granted the motion, holding that the writ of certiorari should be quashed and the petition dismissed.

The appellant three days later obtained leave from the court to amend his petition and the writ of certiorari by incorporating in and adding to the title thereof the words, "And William H. Taft as Secretary of War." The petition being amended and the amended writ of certiorari having been granted, appellees moved to supersede the writ upon the grounds that the writ was granted improvidently and upon ex parte application; that the allowance of the writ would be unjust and contrary to public policy; that the amended petition did not set up facts showing any right of property, title, or interest in petitioner to any alleged office to which he was entitled; that Congress had entrusted to the board of examination, whose proceedings were sought to be reviewed, the decision of matters

properly arising before it, and that said board not being a judicial or inferior tribunal, the court had no jurisdiction to interpose its functions nor to issue the writ of certiorari to examine its proceedings; that the allowance of the writ and the requirement of a return thereto would embarrass the operations of the military service of the United States and the proper administration of the duties of the War Department, and hinder the enforcement of its discipline and regulations and the discharge of the legally ordained functions of that branch of the Government; and that the record sought to be reviewed showed that the petitioner was not entitled to the issuance of the writ, as appeared by a true extract from said record filed therewith. Accompanying the motion to supersede there was filed the affidavit of the appellee, Ainsworth, setting forth that an extract from the record, appended thereto and filed therewith, was a true copy of such part of the record as shows the concluding report of the board of officers convened by special order one hundred and eleven in its proceedings of May 23, 1905.

The court, proceeding to the consideration of the original and amended petitions for the writ of certiorari and the motion to supersede the writ, before the return thereof, ordered (without considering the question of discretion) that the writ of certiorari had been improperly granted and that therefore it should be superseded, and that the original and amended petitions be dismissed.

The petition upon which the writ was granted set forth that until September 14, 1905, the petitioner, Reaves, was Second Lieutenant of the Artillery Corps, United States Army, and was ordered to appear before a board of examination for promotion, convened by special orders numbers one hundred and eleven, one hundred and fifteen, and one hundred and eighty-six; that he was commissioned in the regular army February 20, 1902.

In view of the conclusion to which we have arrived it is unnecessary to here set forth the voluminous allegations of the petition filed by the appellant, for we are met at the threshold by the question of jurisdiction—the power of the Supreme Court of the District of Columbia to issue a writ of certiorari to review the proceedings of the board of examination whose action is here complained of. This board is one created under the authority vested in the President by the act of October 1, 1890 (26 Stat., 562). Section 3 of the act says:

"That the President be and he hereby is authorized to prescribe a system of examination of all officers of the army below the rank of major to determine their fitness for promotion, such examination to be conducted at such times anterior to the accruing of the right to promotion as may be best for the interest of the service. . . . That if any officer fails to pass a satisfactory examination and is reported unfit for promotion, the officer next below him in rank shall receive the promotion; and provided that should the officer fail in his physical examination and be found incapacitated for service by reason of physical disability contracted in line of duty, he shall be retired with the rank to which his seniority entitled him to be promoted, but if he should fail for any

other reason, he shall be suspended from promotion for one year, when he shall be re-examined, and in case of failure on such re-examination, he shall be honorably discharged with one year's pay from the army."

The alleged lack of jurisdiction is founded on the theory that this board is not a judicial or inferior tribunal, but a special tribunal created under the power vested in the President by Congress, and that Congress did not intend to have the proceedings had under said statute reviewable by the courts, and so made no provision therefor. Section 3 of the act has not, to our knowledge, been the subject of interpretation by the courts, though it has been referred by the Secretary of War to the Attorney-General for his consideration and opinion upon one point (21 Opinions Atty. Gen., 385). The Attorney-General held that an officer could not be retired by a board of examination without the approval by the President of its finding.

That Congress acted within its constitutional powers when it enacted the statute in question is undoubted. "By article 1, section 8, of the Constitution, Congress has power 'to raise and support armies; to make rules for the Government of the land and naval forces.' . . . Congress is thus expressly vested with the power to make rules for the government of the whole regular army and navy at all times." *Johnson v. Sayre*, 158 U. S., 109. It is equally true that "all persons in the military or naval service of the United States are subject to the military law." *Johnson v. Sayre*, supra.

Congress having constitutional authority to provide for the government of the army, did, by section 3 of the act of October 1, 1890, give to the President certain powers relating to the promotion, and indirectly to the retirement of officers of the army, and this appellant being an officer of the army was amenable to such statute. If Congress had the power to provide a system of examinations for promotion, and as an incident thereto for the retirement of officers ordered before said boards of examination, we are of the opinion that it had the power to provide that the acts of the President under authority given him should be final and not directly reviewable by the courts.

"Congress alone has the power to determine whether the judgment of a court of the United States, of competent jurisdiction, shall be reviewed or not. If it fails to provide for such a review, the judgment stands as the judgment of the court of last resort, and settles finally the rights of the parties which are involved." We see no valid reason why Congress may not determine in reference to tribunals of competent jurisdiction to be instituted for determining questions relating to the personnel of the army and navy, that their decisions, when made final by the approval of the President, shall not be reviewable through the means of a writ of certiorari.

The statute in terms gives no right of review, and, when we take into consideration the nature of the subject it was legislating upon, many reasons present themselves why such review would, on the whole, be impolitic and have a tendency to embarrass the discipline of the army. If one officer, dissatisfied with the decision of an examining board, has a right to

ask to have the proceedings of the board reviewed by means of a writ of certiorari, then, of course, all others have. This, it would seem, might soon lead to a demoralization of that branch of the military service.

"When the law has confided to a special tribunal authority to hear and determine certain matters arising in the course of its duties, the decision of that tribunal within the scope of its authority is conclusive upon all others." *Johnson v. Towsley*, 18 Wall., 72, 83.

Nor is there anything in the statute, as we read it, which even indirectly suggests that Congress intended to authorize the courts by writs of certiorari to review the acts of the President done under it. The acts of these examining boards not being final, but subject to the approval or disapproval of the President, they are in effect the acts of the President. It is not to be presumed that Congress considered that the decisions of the President, when called upon to exercise judgment and discretion in the performance of duties devolved upon him, should be reviewable. That discretion and judgment was confided in the executive branch of the Government by the act of Congress in question, and that it had to be exercised by the board of examination, and by the President in approving of any finding the board might make, is too plain for argument. As was said by Chief Justice Alvey, speaking for the court, in *Edwards v. Root*, 22 App. D. C., 419: "To interpose in any such case would almost certainly be productive of mischief and confusion in the entire organization. It is a well-settled principle in our jurisprudence and polity of government that the courts can not substitute their own discretion and judgment for that of the executive departments of the Government in matters properly confided to it. Each department of Government must work in its own proper sphere and jurisdiction." 31 Wash. Law Rep., 679.

In the case at bar the board was military in character. It had jurisdiction of the subject-matter and of the person. To review its decision, approved as it was by the President, and in the form sought, would be to establish a most unwise precedent. In *Smith v. Whitney*, 116 U. S., 167, which was a case where the Supreme Court of the District of Columbia at general term had held that it had no jurisdiction to entertain a petition, filed by a naval officer for a writ of prohibition to the Secretary of the Navy, and to a court-martial convened to try him and had therefore dismissed it, the Supreme Court did not consider it necessary to decide as to the power of the court to issue the writ because no case was shown for the exercise of it. The court, however, did say, "The Secretary of the Navy being an executive officer, and not a member of the court-martial sought to be prohibited, it is quite clear that his acts concerning the petitioner can not be the subject of a writ of prohibition. . . . And this court, although the question of issuing a writ of prohibition to a court-martial has not come before it for direct adjudication, has repeatedly recognized the general rule that the acts of a court-martial, within the scope of its jurisdiction and duty, can not be controlled or reviewed in the civil courts by writ of prohibition or otherwise." While recog-

nizing that a board of examination is not the same as a court-martial, and that a writ of prohibition is quite different from a writ of certiorari, nevertheless we are of the opinion that the decision of the latter should not be reviewed by the United States courts, by writs of certiorari, when it acts within the scope of its authority. That the board of examination acted within the scope of its authority we think is shown by that part of the record referred to in the affidavit of appellee Ainsworth. This shows that the board at its session of May 23, 1905, did not find that appellant was permanently physically incapacitated for service, but only that he was at that time and that there was a reasonable hope of his recovery. Furthermore it is not alleged that any report of the proceedings of that session was made to the President, or that any order was presented for his approval or disapproval. This being so we are of the opinion that that board, or another, might thereafter be lawfully convened and appellant sent before it for examination. There is nothing in the section of the act which indicates that Congress intended that should an officer be found by an examining board to be temporarily incapacitated for service by reason of physical disability contracted in line of duty that he should not at a latter date or dates be called before one of these boards for further examination or examinations. Until the President shall approve a finding of one of these boards retiring an officer, the question of further examination, we think, lies within the judgment and discretion of the President and those acting for him. We are therefore of the opinion that the appellant was properly before the board in August, 1905, and that the board had jurisdiction in the premises, and it does not appear that appellant then and there raised the question of jurisdiction. Conceding that the proceedings of the board in August, 1905, were as arbitrary and irregular as alleged, we must bear in mind that its members were presumably not familiar with the niceties of the forms of law, but as we are not considering the merits of the case, other than to determine the question of the jurisdiction of the board, it is unnecessary to comment upon the acts of the board.

We have examined the case of *People ex rel. Smith v. Hoffman*, 166 N. Y., 462, much relied on by appellant's counsel. In that case it was held that a writ of certiorari not being prohibited under section 2120 of the New York Code of Civil Procedure, or by the military code, was a proper proceeding by which to review a decision of a board of examination having before it a member of the State militia. While the decisions of the Court of Appeals of the State of New York are entitled to the highest consideration, they are of course not controlling in this jurisdiction, and, where, as in the present case, the facts are different, we can not presume that had they this case to pass upon they would hold that a writ of certiorari would lie to review the decision of an examining board created under authority granted to the President by Congress. We think that the court recognized in their decision a distinction where the "subject is treated with reference to the standing army rather than the

militia of the various States." At all events we think there is a marked difference. Where a man enlists in the regular army of the United States "his relations to the State and the public are changed." As said in *In re Grimley*, 137 U. S., 147, 153: "While our regular army is small compared with those of European nations, yet its vigor and efficiency are equally important. An army is not a deliberative body. It is the executive arm. Its law is that of obedience." If officers dissatisfied with the decisions of army or navy boards before whom they are legally summoned are to be permitted to have a court's review of such decisions it will not be long before a state of demoralization will exist, the effects of which will be far-reaching. In civil matters the courts have been slow to review the acts of executive officers acting within their jurisdiction in matters requiring the exercise of judgment and discretion. They should be, and we think they have been, equally slow in setting up their judgment against that of tribunals provided by law for regulating matters, authorized to be passed upon by military tribunals, composed of military or naval officers who are especially fitted by their training and experience to determine the questions submitted to them. As has been said, "it would therefore be most illogical, to say nothing of the impediments to military discipline which would thereby be interposed, to apply to the proceedings of court-martials" (or similar tribunals) "those rules which are applicable to another and different course of practice."

Being of the opinion that the Supreme Court of the District of Columbia was without jurisdiction to grant a writ of certiorari to review the proceedings of the board of examination referred to in the petition it follows that its decision suspending the writ of certiorari and dismissing the original and amended petitions should be, and it is hereby, affirmed.

Affirmed.

ORLANDO H. BISSELL, APPELLANT,

v.

THE DISTRICT OF COLUMBIA.

NEGLIGENCE; SEWER-TRAP; EVIDENCE; NOTICE.

1. In an action for personal injuries sustained by falling through the opening of a sewer-trap, where all that appeared from the plaintiff's evidence was that while walking along a street he stepped on the edge of the lid of one of these sewer-traps located in the tree space outside the paved portion of the sidewalk and the lid tipped and he went down into the opening and was injured, and that on examining the place the next day he found that the lid was a thin sheet of iron fitting into a groove which was full of dirt and the lid itself was worn and rusty, held that the evidence was insufficient to show clearly either that the sewer-trap was defective or that if there was a defect it was one of which the municipal authorities were charged with constructive notice, and the direction of a verdict for defendant held proper.
2. The refusal by the trial court of an offer by the plaintiff to prove by a witness produced by him that the witness had examined the cover of the trap in question four days after the accident and found it defective and worn, "and to establish by said witness its condition at the time of and before the accident by proving what its condition was a week afterward," held not reversible error.

No. 1858. Decided June 5, 1906.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia,

at Law, No. 47,770, entered upon a verdict directed by the court in an action for personal injuries suffered by defendant. Affirmed.

*Mr. P. A. Bowen, Jr., and Mr. F. C. Handy* for the appellant.

*Mr. E. H. Thomas and Mr. H. P. Blair* for the appellee.

Mr. Justice McCOMAS delivered the opinion of the Court:

This action was brought by the plaintiff, Orlando H. Bissell, against the defendant, the District of Columbia, to recover damages for personal injuries alleged to have been sustained by the plaintiff by falling through the opening in a sewer-trap which the defendant had negligently permitted to remain out of repair and in an unsafe condition, by permitting the manhole or cover of a sewer-trap, located on the south side of "L" street northwest, between Thirteenth and Fourteenth streets, in Washington, to become insecure, unsafe, and defective without any warning or protection at the unsafe sewer-trap to show that it was unsafe and dangerous, and in consequence thereof, the plaintiff, on May 17, 1905, stepped upon the unsafe cover or circular lid of the sewer-trap that had for a long time been in the sidewalk and left unsafe through the negligence of the defendant, whereby the circular lid turned on edge or otherwise precipitated plaintiff through the opening and down into the sewer-trap, whereby he suffered the injuries complained of in the declaration. Upon the plea of not guilty interposed by the defendant, the case was tried before a jury which, under the instruction of the court below, returned a verdict for the defendant.

There are two assignments of error. The second and most important of these assignments is that the court erred in directing the jury to return a verdict for the defendant.

The testimony on behalf of the plaintiff was his own and that of his companion, Doctor Dodge. The latter confirmed the plaintiff as to the circumstances of the accident, described the location of the sewer trap, knew that it was made of iron, and confirmed the plaintiff in respect to the location of the trap, but had not particularly examined it after the accident. The plaintiff testified that near midnight on May 17, 1905, he was passing along "L" street northwest, between Thirteenth and Fourteenth streets, and stepped on the lid or cover of a sewer-trap and believes he stepped on one edge of it. It tipped with him and he went down into the opening up to his arm pits and suffered injuries which he fully described. This manhole was the middle one of three of the same kind on the south side of the street. There were tree boxes there and this sewer-trap was out in the tree space surrounded by grass and dirt and not in the paved portion of the sidewalk. On the next forenoon after the accident the plaintiff inspected the place and found that the sewer-trap was a thin lid of cast iron from an eighth to a quarter of an inch thick, about eighteen inches in diameter, fitting into a groove which was full of dirt, and the lid itself was worn and rusty, and the plaintiff believed that these conditions were the cause of the lid turning when the plaintiff stepped on it.

Doctor Perry, the physician who attended

him, described the plaintiff's injuries and the physician's treatment of them.

Mr. Bowen offered but was not permitted by the court to testify in regard to the condition of this sewer cover, but the appellant has not here relied upon the exception to the proffer of Bowen's testimony then taken.

The meager description of the sewer cover as described by the plaintiff would hardly justify the jury in finding that it was unsafe. The rust did not make it unsafe. It was thin but did not break under the man's weight. The plaintiff himself believed that he stepped on one edge of the lid and it then tipped with him. After the accident he said the groove was full of dirt. Its location in the tree space surrounded by dirt could readily have caused the earth, washed by a dashing spring shower, to gather in the time of year when the accident happened. If the lid had been carelessly replaced by some one recently, it might have tipped with the plaintiff as he believed it did. The plaintiff's evidence indicates that the few circumstances he suggests as likely to have contributed to the accident may have been quite recent conditions. If such conditions had suddenly occurred, the defendant had no actual notice of them and the plaintiff's evidence did not warrant the court in imputing constructive notice to the defendant. It appears that the learned court below instructed the jury to find for the defendant because the plaintiff failed to prove the case stated in his declaration. The proof tended to show that the lid was ajar and had not been properly replaced. The plaintiff's counsel relies upon the ruling of this court in *District of Columbia v. Payne*, 13 App. D. C., 500. In that case there was a catch-basin leading into the sewer about two feet in diameter and protected by an iron lid which was designed to be kept in position by two lugs. This lid upon being slightly turned fitted into flanges at the under surface of the iron covering of the catch-basin located about the center of the sidewalk. Upon examination after the accident it was found that the lid had but one of these lugs remaining, and one could not keep it in position. The other lug had been previously broken off and the lid, with one lug broken, when put in place would slip off when touched by the foot of the passenger travelling over the sidewalk, and it was impossible for it to retain its position, with only one lug left, if a person walked upon it. The portion of the under lid where the lug had broken off was found to have the appearance of an old break. At the point where the one lug was broken off, the broken surface was rusted and in the crevices at the broken point dirt had washed and had dried in the broken part of the flanges. All the circumstances indicated that it was an old break, and it was further shown that boys frequently tampered with the lids of these catch-basins, and they were liable thus to be broken. The particular basin in that case was adjacent to a police patrol box at which the policemen on that beat register their rounds. This court said that in the *Payne* case the evidence was not strong as bearing upon the essential fact of notice, and remarked that the principal circumstance was that the lid or cover of the catch-basin had remained in its broken condition before the accident, as indicated by the rust and



dirt accumulated on the irregular surface at the spot where one lug had been broken off, and the court concluded that there were enough facts and circumstances in proof upon which reasonable men might fairly differ. 27 Wash. Law Rep., 24.

In the plaintiff's testimony in the case before us, on the contrary, there is nothing to indicate that the condition of the lid which tipped with him was a long standing condition. The indications were that the lid was not in place. Upon the testimony before the jury we can not say the learned court below committed error, because there was not sufficient proof from which it appears that if there was a defect it ought to have been known and remedied by the municipality. It is not clear there was any defect. It is not at all clear that if there were, however, these slight circumstances tending to indicate it, in the absence of actual notice, were sufficient to attribute constructive or implied notice to the municipal authorities.

2d. The counsel for the appellant were aware of the weakness of the appellant's case upon the evidence admitted and strenuously urged that the court below committed reversible error in refusing to permit the witness McQuade to testify as to the condition of the lid in the trap four days after the accident, whereby they claimed they might have established such constructive notice as would make the defendant here liable. Unfortunately for the appellant when the witness McQuade had been asked whether he had inspected this sewer-trap and defendant's counsel objected, thereupon plaintiff's counsel offered to prove by McQuade that he had examined the well or cover of this trap in question "and found it in a defective state, worn, and of long standing, and to establish by him its condition at the time of and before the accident by proving what its condition was the week afterward," and the court sustained the defendant's objection. Manifestly, upon such a proffer, without more, we can not say the court committed reversible error. The appellant did not proffer to show what was the condition either a week after, or how such condition tended to show that the same condition obtained at the time of the accident, nor did he proffer to show what were the defects he expected to prove by the witness. The limited scope of the proffer suggests that the testimony of the witness may have been unimportant. However, we are not justified in assuming anything. It suffices that the proffered evidence, if admitted, without more, could not suffice to make out a case for the plaintiff. In respect to the question involved in this case see *Scott v. District of Columbia*, decided by this court at the present term. 34 Wash. Law Rep., 420.

The judgment of the court below must be affirmed, with costs, and it is so ordered.  
Affirmed.

Attorneys.—An attorney who collects money due on an assigned judgment, and pays it over to a stranger on demand, is held, in *Moss Mercantile Co. v. First Not. Bank (Oregon)*, 2 L. R. A. (N. S.), 657, not to be estopped, as against an assignee, to show that he had recognized a paramount title.

## Court of Appeals of the District of Columbia.

JOHN L. O'BRIEN, APPELLANT,

v.

UNITED STATES.

EMBEZZLEMENT; INDICTMENT; DUPLICITY; INTENT; EVIDENCE.

1. The offense defined by sec. 834, Code D. C., is single, i. e., embezzlement, which under the statute may be committed, either by the unlawful conversion by the accused to his own use of property coming into his hands by virtue of his employment, or by fraudulently taking, making away with, or secreting such property with intent to convert to his own use; and an indictment charging the embezzlement to have been committed by means of both methods is not bad for duplicity.
2. Under section 834 of the Code, where an employee wrongfully converts to his own use money of his employer which has come into his hands by virtue of his employment, the act is in its nature evil, and prima facie the intent is also evil. In such case the jury are properly instructed that to convict the accused they must find that he wrongfully converted to his own use money of his employer; and the refusal of an instruction that the jury must find that such conversion was with intent to defraud his employer is not error.
3. In a prosecution for embezzlement by defendant of moneys collected by him for one H., witnesses were produced who testified to payments made him. The bookkeeper of H. identified a "credit book" in which it was defendant's duty to enter collections made by him and which failed to show the payments testified to by said witnesses. He further testified that it was his custom each month to make out from the ledger kept by him and deliver to defendant statements of accounts of customers from whom defendant was to make collections, the items in each statement being added up and the total placed at the bottom, and at the same time the total of each statement was entered in lead pencil upon the ledger account of the customer. Held, that the trial court properly admitted these lead pencil entries in the ledger in evidence for the purpose of refreshing the memory of the witness and enabling him to testify as to the amount of the statement of a customer for a particular month made by him and given to the defendant for collection.
4. The witness was also permitted, over defendant's objection that the ledger was not the book of original entry, to testify that no entry of the payments testified to by the several witnesses appeared on the ledger. Held, that the admission of this evidence was not reversible error, inasmuch as the "credit book," in which it was defendant's duty to enter collections made by him, and from which such entries after being carried into the cash book were transferred to the ledger, and which had without objection been admitted in evidence, also failed to contain entries of such payments.
5. The inference that an accused has embezzled property by fraudulently converting it to his own use may be drawn from the fact that he has failed to pay over or to account for such property to the owner thereof.

No. 1627. Decided April 8, 1906.

APPEAL by defendant from a judgment and sentence of the Supreme Court of the District of Columbia, holding a Criminal Court, entered upon a verdict finding him guilty of embezzlement. Affirmed.

Mr. W. J. Lambert and Mr. J. M. Thurston for the appellant.

Mr. J. S. Easby-Smith for the United States.

Mr. Justice McCOMAS delivered the opinion of the Court:

This is an appeal from a judgment of the Supreme Court of the District of Columbia holding a Criminal Court. The judgment was upon a verdict of guilty after a trial upon the indictment herein considered.

John L. O'Brien, the appellant, was indicted for embezzlement under section 834 of the Code of the District of Columbia. The indictment contained eight counts, identical in form in every respect except that each count charged the embezzlement of a different sum of money. The first count charged that on a certain day John L. O'Brien was a salesman and collector in the employment of a certain Frank Hume, and that on the day named he had in his possession a sum of money stated, belonging to said Hume, which money, being of the value stated, had come into the possession of O'Brien by virtue of such employment, and he having it in his possession and under his care "did then and there, and while he was such clerk as aforesaid, wrongfully convert the same to his own use and fraudulently take, make away with, and secrete the same with intent to convert the same to his own use, and did thereby then and there, embezzle the same," against the form of the statute, etc. This statute, section 834 of the Code, is:

"Embezzlement by agent, attorney, clerk, or servant.—If any agent, attorney, clerk, or servant of a private person or copartnership, or any officer, agent, attorney, clerk, or servant of any association or incorporated company, shall wrongfully convert to his own use, or fraudulently take, make away with or secrete with intent to convert to his own use, anything of value which shall come into his possession or under his care by virtue of his employment or office, whether the thing so converted be the property of the master or employer, or that of any other person, copartnership, association, or corporation, he shall be deemed guilty of embezzlement, and shall be punished by a fine not exceeding one thousand dollars, or shall be imprisoned for not more than ten years, or both."

The appellant in the court below filed a motion to strike out the counts and later a demurrer to the indictment. The motion and demurrer were overruled, as was also a motion to quash later filed. Upon the trial the defendant was tried and found guilty upon six counts of the indictment, and thereafter a motion in arrest of judgment was entered and overruled by the court.

Nine assignments of error are urged. All of them, except the 4th, 5th, and 6th are considered together because they involve the construction of section 834, the indictment thereunder, and the instructions of the court based upon this statute and indictment.

1. Chief Justice Shepard, for the court, in *Gasenhelmer v. The United States*, 34 Wash. Law Rep. 80, has, at this term, said:

"Section 834, as stated in appellant's brief, plainly describes two classes of acts, either one of which constitutes embezzlement; the first being the unlawful conversion to his own use by the accused of the property which has come into his possession by virtue of his employment, and the second being the fraudulently taking, making away with, or secreting with the intent to convert such property to his own use."

The offense is single, namely, embezzlement, which the statute says may be committed by either of two methods or ways. This count which charges that the embezzlement was committed by means of both methods is not bad for

duplicity. A conviction under this count will be sustained by proof that the accused embezzled the money of his employer, Hume, either by wrongfully converting it to his own use or by fraudulently taking, making away with, or secreting the money with intent to convert it to his own use after it came into his possession by virtue of his employment.

Mr. Bishop says a statute often makes punishable doing one thing or another. A person who in one transaction does both, violates the statute but once and incurs its penalty. If he does but one thing he violates the statute equally. Therefore, the indictment on such a statute may allege, in a single count, that the defendant did both of the forbidden things, by "employing the conjunction and where the statute has 'or' and it will not be double and it will be established at the trial by proof of any one of them." 1st Bishop New Crim. Proc. sec. 436.

And again he says:

"Some single offenses are of a nature to be committed by many means, or in one or another of several varying ways. Thereupon a count is not double which charges as many means as the pleader chooses, if not repugnant; and at the trial, it will be established by proof of its commission by any one of them." 1st Bishop New Crim. Proc., sec. 434.

And again, "If the statute makes criminal the doing of this, or that, or that, mentioning several things disjunctively, there is but one offense, which may be committed in different ways, and in most instances all may be charged in a single count. But the conjunctive 'and' must, ordinarily, in the indictment take the place of 'or' in the statute, else it will be ill as being uncertain. And proof of the offense in any one of the ways will sustain the allegation." 1st Bishop New Crim. Proc., sec. 586; *State v. Hodges*, 45 Kansas, 393; *Tompkins v. State*, 4 Texas Ct. of Appeals, 161; *Maine v. Smith*, 61 Me., 388.

In the indictment we are now considering the offense charged is embezzlement. We repeat it is single. Under the statute (Code, sec. 834), if the appellant should wrongfully convert to his own use or fraudulently take and secrete his employer's money with intent to convert the same to his own use, he would embezzle the same. Both methods of embezzling are alleged in the indictment with the conjunctive "and," whereupon, if one method be proved, or if both methods be proved, the appellant is properly convicted under the count. The several modes mentioned in this statute and set out in the same terms in each count of this indictment are so many modes of describing one and the same offense, namely, embezzlement.

In *Crain v. United States*, 162 U. S., 625, 635, the Supreme Court discusses several cases in which several offenses were charged in one count and yet were not bad for duplicity, and the court proceeds: "We are of opinion that the objection to the second count upon the ground of duplicity was properly overruled."

The statute was directed against certain defined modes for accomplishing a general object, and declared that the doing of either one of several specified things, each having reference to that object, should be punished by imprison-

ment. . . . We perceive no sound reason why the doing of the prohibited thing, in each and all of the prohibited modes, may not be charged in one count, so that there may be a verdict of guilty upon proof that the accused had done any one of the things constituting a substantive crime under the statute. And this is a view altogether favorable to an accused, who pleads not guilty to the charge contained in a single count; for a judgment on a general verdict of guilty upon that count will be a bar to any further prosecution in respect of any of the matters embraced by it."

We are of opinion, therefore, that the indictment in this case correctly charges embezzlement under section 834 of the Code, and the learned court below properly overruled the appellant's demurrer, and also his motion to quash the indictment.

The appellant insists that the court below erred in refusing to instruct the jury that to convict the appellant it must find that Hume's money was wrongfully converted by the defendant to his own use "with intent to defraud Hume;" and that the court erred in instructing the jury that to convict the appellant it must believe respecting Hume's money in his possession "that he wrongfully converted that money to his own use." We agree that the evil intent is an element of every crime which must be in some way alleged and proved, but, as Mr. Bishop says, "where, in the nature of the individual case, it is a part of the act alleged, it need not be separately stated. . . . Hence to allege simply the act makes the required *prima facie* case." The rule is that if a statute creating an offense is silent concerning the intent, nothing of the intent need appear in the averment. 1st Bishop New Crim. Proc., secs. 521, 522.

Of course "the evil intent must be joined in averment to an act which, being in its nature innocent or indifferent, is by such intent made criminal. But an act in nature evil is *prima facie* evil also in intent, so this intent need not be alleged, unless the law has made it affirmatively or descriptively an element in the offense." 1st Bishop New Crim. Proc., sec. 524.

The section on which this indictment was based illustrates each of the three statements in Mr. Bishop's summary. The appellant could take, make away with, or secrete his employer's money, and the nature of the act might be at least indifferent; therefore, the statute says he must "fraudulently take, etc., with intent to convert to his own use." Such intent makes the act criminal. But should the appellant wrongfully convert "to his own use" his employer's money, this act in its nature is evil and *prima facie* the intent also is evil. If he wrongfully converted to his own use his employer's money, the evil intent need not be further alleged. If the statute had added the superfluous intent, the statute would have made it an element of the offense, in which case the indictment must have alleged it, and the court below must have expressly charged it. In the case before us it was not necessary to specially charge an intent to defraud Hume, because the case of the Government was pressed not upon the second method, but upon the first method

of embezzling, and conviction was asked because the appellant had wrongfully converted to his own use his employer's money. To wrongfully convert such money is an act in its nature evil, and the statement of the act itself imports the evil intent. The wrongful conversion constitutes the offense. Stephens Digest of Crim. Law, p. 254, note 4. Wrongful acts knowingly committed can not be excused on the ground of innocent intent. The color of the act determines the complexion of the intent. Therefore, in our opinion, the learned court below did not err as claimed in the appellant's seventh and eighth assignments of error.

The cases in New Jersey and Massachusetts, relied on by the appellant, are each cases in which the statute required the intent to defraud the employer, in the one case, and the intent to fraudulently convert to his own use, in the other, to be alleged. See *Commonwealth v. Hays*, 14 Gray, 62; *State v. Lyons*, 45 N. J. L. Rep., 274.

In *Maine v. Smith*, 61 Me., 388, wherein a number of independent substantive offenses were included in one count, and that count was rightly held bad, the court said that it is not so where the several acts mentioned in the statute are but so many modes of describing one and the same offense, that offense being established by proof of either of the modes.

In *State v. Butler*, 21 S. C., 353, the breach of trust act under which the defendant was indicted was held by the court to be "the same in all of its features as common law larceny." Of course, in such a case, the felonious intent must be alleged and proved. The other authorities cited by the appellant's counsel are not more persuasive than these.

2. The 4th, 5th, and 6th assignments of error relate to the admission of evidence to which the appellant excepted. The bill of exceptions is so defective that it is quite difficult to understand what occurred at the trial. Among the other witnesses the Government produced Mary Horrigan and five others, who each testified that they knew the appellant; that he was a salesman and collector for Frank Hume, and that each of them had paid the defendant for Hume amounts named in the indictment and each received from the defendant receipted statements showing such payment, which statements were introduced in evidence and identified as being in the handwriting of the appellant.

The Government then produced Charles Schaaf, who testified that he is a bookkeeper in Hume's employment, and that for some years prior to October 28, 1902, when appellant was discharged, he was employed by Hume as salesman and collector. Schaaf produced a "credit book" kept at Hume's store, and testified that when collections were made it was the custom of business and the duty of the collectors, of whom appellant was one, to enter therein the moneys collected, and the names of persons from whom collected, and it appeared that in the credit book there were no entries of collections corresponding with the several payments which Mary Horrigan and the five other witnesses testified they had made to appellant.

Schaaf further testified that each month he would make out and deliver to the defendant

statements showing balances due Hume by each of these customers, and the witness produced a ledger kept by him as part of his duty as bookkeeper. The entries in the book were all in his own handwriting, and he monthly "drew off" from said ledger statements showing the state of the accounts of each of the customers of Hume, from whom it was the defendant's duty to collect. When he completed a monthly statement he would add up the items of that statement, put the total at the bottom of the statement, and would give the statement to the appellant as collector, at the same time entering the total of the monthly statement thus given to the collector in lead pencil upon the ledger account of the particular customer. He always entered this pencil statement of the total when he delivered the statement with such total to the appellant for collection. He then read from the pages of the ledger, which contained the accounts of Mary Horrigan and the five other witnesses, the lead pencil totals of the monthly statements of amounts, due by each of these witnesses, which were the same totals he had put upon the monthly statement he had at the same time delivered to the appellant as collector.

The appellant's counsel admitted that the written statements made by the witness and given to the defendant to collect the amounts thereof from the customers would be admissible, but objected that pencil entries of the same amounts at the same time made in the ledger by the witness could not be admitted against the appellant. The court overruled the objection and admitted such pencil entries of the totals. Now the lead pencil entries were original entries made by the bookkeeper, Schaaf. The appellant could not be required to produce the statements given him by the bookkeeper showing the amount due at the end of the month by the particular customer even if he had them. It seems likely from the record that such statement was receipted by the appellant and given to the customer, but this is not clear and we may not assume it. It is plain that when Schaaf, the bookkeeper, "drew off" the items for the month due and the total thereof, payable by Mary Horrigan, for instance, and at the very time he delivered such statement to the appellant as collector, entered in lead pencil the total that month due by Mary Horrigan, and then produced such entry, Schaaf used the entry to testify, that thus refreshed as to the transaction between the appellant and himself, he was able to say that the amount in lead pencil was the amount due that month by Mary Horrigan, and the total amount on the statement he gave to the collector to demand from her. As Mr. Justice Strong observes: "How far papers, not evidence per se, but proved to have been true statements of fact, at the time they were made, are admissible in connection with the testimony of a witness who made them, has been a frequent subject of inquiry, and it has been many times decided that they are to be received. And why should they not be? Quantities and values are retained in the memory with great difficulty. If at the time the entry of aggregate quantities or values was made the witness knew it was correct, it is hard to see why it is not at least as

reliable as the memory of the witness." *Bates v. Preble*, 151 U. S., 149, 155.

We take the meager bill of exceptions to mean that Schaaf, who stated that he had given to the appellant, as collector, Mary Horrigan's account with the total at the bottom thereof, and that at the same time he gave the statement to the appellant he put the total in pencil on the page in his ledger where appeared Mary Horrigan's account for that month, was enabled when refreshed by this pencil entry produced to testify, and that he did testify that the statements he gave the collector for that month authorized and enabled the collector to demand and receive that specific sum from Mary Horrigan, and it appears that Mary Horrigan testified that the collector gave her some such statement; that she paid him a sum of money thereon and the same witness, Schaaf, produced the "credit book" whereon it was the duty of the appellant to enter the sum of money he at that time collected from Mary Horrigan to let the jury see and know whether the collector had charged himself on the credit book with such sum. This testimony was properly admitted.

We fail to appreciate the objection made by the appellant's counsel to this evidence. It is admitted that the original statement delivered by Schaaf to the appellant would be admissible; it is denied that Schaaf's pencil entry of the total of each of said statements was admissible. Underhill on Criminal Evidence, section 42, says that the rule requiring notice to produce a writing known to be in the possession of the opposite party before secondary evidence of its contents can be received is qualified in a criminal case.

"This rule is applicable to criminal prosecutions with the qualification that, as the State has no power to compel the production of a writing in the rightful possession of the defendant, the notice to him is nugatory and may perhaps under some circumstances be dispensed with."

In *McGinnis v. The State*, 24 Ind. Rep., 506, the court says: "We are satisfied that in this country the current rule of decisions in prosecutions for larceny is in favor of admitting parol evidence of a written instrument which is the subject of the prosecution, and is in the possession of the prisoner, without first giving notice to produce it."

Apart from this view the entries were contemporaneous writings made by the witness, and were competent to refresh his memory when endeavoring to inform the jury what amount for a particular month was the total of the statement given by Schaaf to the appellant to collect from each of the half dozen witnesses who testified, that for the particular month they had paid the appellant as collector specific amounts. We thus dispose of the fourth assignment of error.

The next objection to the testimony arose after Schaaf had testified that when collections were made it was the custom and duty of the collectors to make entries thereof in the "credit book" kept at the store for that purpose, and that witness, Schaaf, constantly examined the "credit book" and transferred such entries, in the handwriting of the collectors, into the cash

book kept by the witness, Schaaf, which must mean the amount paid to appellant, for instance, by Mary Horrigan, the entry being signed or by handwriting identified in the "credit book" as being a collection of money from Mary Horrigan by the appellant at a particular date, and Schaaf would transfer his entry to the cash book and thence to the ledger, and thereupon the appellant's counsel objected that the ledger was not an original book of entry; that the witness Schaaf should not be asked whether or not there appeared in his ledger, on the page whereon was Mary Horrigan's account, between June 27 and October 28, 1902, a credit of \$100, as paid by said Mary Horrigan and which she had just testified she had paid the appellant for Frank Hume about June 27, 1902. It appears the court admitted the answer that no such entry appeared on the ledger. The Government had offered the "credit book" in evidence and Schaaf had testified that it was the custom and duty of the collector to enter thereon money paid by Mary Horrigan, and it appeared that the particular payment of \$100 was not entered thereon. Schaaf had testified that he looked only to the "credit book" to find collections entered by the appellant as paid by Mary Horrigan to him and when he found such had transferred it to the cash book and thence to his ledger. Thus his ledger on this subject only copied what payments of Mary Horrigan to appellant appeared on the "credit book." So far as we are able to understand the bill of exceptions, it must be taken to mean that when Schaaf offered Mary Horrigan's account in his ledger showing no payment between June 27, 1902, when she testified she paid appellant \$100 for Hume, and the day appellant was discharged by Hume, Schaaf used his own entry in his own ledger to show what had already been shown by the "credit book" without objection, and the same proceeding was followed in respect of the accounts of the five other witnesses who testified concerning payments made by them to the appellant for Hume. The "credit book" and the entries thereon were admitted without objection. We have already said the total of each account, the contemporaneous pencil entry of Schaaf, was admissible. The objection of appellant's counsel does not help us better to understand the meager statement in the record, but because the absence of entries of payments in the ledger was a consequence of the absence of such entries in the "credit book," we are satisfied that no prejudice happened from this use of the ledger. It was a vain thing. At least there was no reversible error. The appellant's brief upon this point does not clarify the obscure statement in the record, but it does show that the entry in the ledger of credits upon Mary Horrigan's account, for instance, was in the handwriting of Schaaf, who had transferred it from the cash book, also kept by him, and that such entry was taken by him from the "credit book" wherein the appellant entered money paid by Mary Horrigan in his own handwriting, and that in this respect the ledger added nothing more than had already appeared in the "credit book" conceded to be admissible.

In our opinion, when each customer testified

to payments made to the appellant as collector for Hume, and the appellant failed to charge himself with such payment on the "credit book," and in respect of numerous creditors during a long period of time, frequently omitted to charge himself on the "credit book" with like moneys, and the pencil entries proved what the appellant should have collected from each customer, there was evidence that the appellant had wrongfully converted such moneys or some of them to his own use while in Hume's employment. As Mr. Stephen says, the inference that a prisoner has embezzled property by fraudulently converting it to his own use may be drawn from the fact that he has not paid the money in due course to the owner, or from the fact that he has not accounted for the money which he has received. *Stephen Digest of Criminal Law, Art. 312.*

We are convinced, therefore, that the 5th and 6th assignments of error do not show reversible error. What we have said in disposing of the assignments of error we have discussed also disposes of the assignments of error not discussed. This judgment upon the verdict in this case must be affirmed, and it is so ordered.

Affirmed.

THEODORE A. COOK, APPELLANT,

v.

UNITED STATES.

PERJURY; EVIDENCE; CORROBORATION.

1. A person accused of perjury can not be convicted upon the uncorroborated testimony of one witness; but the charge must be proved either by two witnesses or by one with corroborating circumstances, and the corroboration must be by proof of independent and material facts and circumstances tending directly to corroborate the testimony of the witness for the prosecution.
2. To convict of perjury upon oral testimony, the oath of the prosecuting witness should in positive terms contradict the statement of the person accused of the perjury.
3. The evidence in a prosecution for perjury reviewed and held insufficient to support a conviction; and the refusal to direct a verdict of acquittal held error.

No. 1590. Decided January 4, 1906.

APPEAL by defendant from a judgment and sentence of the Supreme Court of the District of Columbia, holding a Criminal Court, entered upon a verdict finding him guilty of perjury. Reversed.

*Mr. Hayden Johnson, Mr. J. McD. Carrington, and Mr. Thomas Walker* for the appellant.

*Mr. D. W. Baker* for the United States.

Mr. Justice DUELL delivered the opinion of the Court:

The appellant was convicted of perjury consisting of certain testimony alleged to have been given by him upon the trial of one Parker for housebreaking. The perjury set forth in the indictment charges that the appellant on the trial of Parker:

"Unlawfully, falsely, maliciously and corruptly did testify, declare and give in evidence at and upon his said examination, and wilfully and contrary to his said oath state in substance and to the effect following, that is to say; that he, the said Theodore A. Cook and said Jesse Parker got on a car together at Tennallytown in

said District, about the hour of eight o'clock post meridian, of the fifth day of November, in the year of our Lord one thousand, nine hundred and four, and came to Georgetown in said District; that they remained together in said Georgetown until about the hour of twelve o'clock midnight of the day and year last aforesaid; that he, the said Theodore A. Cook, said Jesse Parker and one Harvey Graves then took the car leaving said Georgetown, at the hour of twelve o'clock midnight, for said Tennyaltown, and that the said car arrived at Tennyaltown about thirty minutes past one o'clock ante-meridian, of the sixth day of November, in the year last aforesaid; and that all three then got off the said car at said Tennyaltown; that he, the said Jesse Parker lives in said Tennyaltown, and that he, the said Theodore A. Cook, saw the said Jesse Parker go into his house in said Tennyaltown."

To sustain the charge of the indictment the Government, after proving that appellant gave testimony on the Parker trial, showed by three witnesses, one a juror at the Parker trial and the others, two policemen, that appellant had testified that on the night of November 5, 1904, he, Parker, Harvey Graves, and one Della Carter, at about 8 o'clock p. m., boarded a Tennyaltown car, came to Georgetown and went to a certain saloon, where, after having a drink, appellant and Graves left; that they returned about ten minutes before midnight and, being joined by Parker, the three took a car for Tennyaltown, and reaching there separated.

Comparing this testimony with the allegations of the indictment it will be seen that there is no attempt on the part of the Government to show that appellant testified that the four parties named remained together in Georgetown until about 12 o'clock midnight; that the car they took to Tennyaltown arrived there about 30 minutes past 1 o'clock; and that appellant saw Parker go into his house in Tennyaltown. The perjury, if perjury be shown, therefore, relates to two statements made by appellant; first, boarding the car at Tennyaltown at 8 o'clock on the evening of November 5, 1904, in company with Parker, Graves, and Della Carter; second, boarding the car at Georgetown at about 12 o'clock the same night in company with Parker and Graves and arriving at Tennyaltown.

There is no direct and positive testimony whatever to show the falsity of the first statement. The testimony offered on behalf of the Government on this point consists of the testimony of one Paxton, who swore that a few minutes before 7 o'clock on the evening in question he paid off Parker at Georgetown, and "about" 7 o'clock boarded a car at Georgetown for Tennyaltown, leaving Parker at Georgetown. This does not militate against the statement of appellant relative to his leaving Tennyaltown in company with Parker "about" 8 o'clock. A conductor called by the Government testified that the cars that evening were running fifteen minutes apart, and it was quite possible for Parker to board the next car for Tennyaltown and return at the time stated by appellant. Such words as "about" and "shortly after," used in reference to time, are relative terms, especially when spoken by witnesses

who are not shown to have looked at any time-piece in fixing the time and when the witnesses are of the class to which the ones testifying in this case belong. Catherine Graves, the mother of Harvey Graves, testified that she saw the appellant Parker and her son get off the Tennyaltown car at Thirtieth and P streets, Georgetown, shortly after 8 o'clock. This testimony, given by a witness for the Government, tends to prove that the appellant did not commit perjury in testifying to the time when he left Tennyaltown, but this testimony, however, may be disregarded, for Paxton's testimony is utterly insufficient to prove the charge of perjury under any known rule of law relating to the quantum of testimony essential to prove perjury. Appellant and Harvey Graves were called as witnesses at the trial of this case, and testified that they left Tennyaltown with Parker about 8 o'clock on the night in question. Their testimony, however, may be disregarded, for, as we have said, the Government wholly failed to prove that the appellant committed perjury when he stated that he and the others left Tennyaltown about 8 o'clock that evening.

The real question is whether appellant committed perjury in testifying that he, Parker, and Graves left Georgetown about midnight and left the car at Tennyaltown. The only witness called by the Government to prove the falsity of this statement was Catherine Graves, the mother of Harvey Graves. Such testimony as she gave is claimed by the Government to be sufficiently corroborated by proof of certain circumstances and facts sworn to by other witnesses called on behalf of the Government.

A person accused of perjury can not be convicted upon the uncorroborated testimony of one witness. The charge must be proved either by the testimony of two witnesses or by one with proof of corroborating circumstances. The corroboration must be by proof of independent and material facts and circumstances tending directly to corroborate the testimony of the witness for the prosecution and must be of a strong character and not merely corroboration in slight particulars. This is the rule as set forth in 22 Am. & Eng. Enc. of Law, 2d ed., 694, and numerous cases there cited. It would also seem that to convict of the crime of perjury upon oral testimony the oath of the prosecuting witness should in positive terms contradict the statement of the person indicted for perjury. Applying this last rule to the testimony of Catherine Graves, it would seem that the Government failed to give that absolute and positive contradiction which is required to be given by the prosecuting witness. She testified on her direct examination that on Saturday night, November 5, 1904, her son, Harvey Graves, and Theodore Cook both arrived at her house between 11 and 12 o'clock p. m., and slept there. On cross-examination she was unable to give any reason for fixing said date, and testified that the two boys had often slept together at her house, and that the night concerning which she testified might not have been Saturday night, November 5, 1904, but might have been some other Saturday night. We think this testimony falls short of being that positive testimony required of a prosecuting witness whose testimony is relied upon to prove per-

jury, and which must be supplemented with proof of corroborating circumstances. While her testimony in chief would have been sufficient evidence, in connection with corroborating circumstances, to go to the jury, whose verdict would not then be disturbed, yet, when that testimony on direct examination was so weakened on cross-examination, we do not think it comes within the rule requiring the oath of the prosecuting witness to contradict in positive terms the statement of the accused. As was said in *Gandy v. State*, 27 Neb., 707, 734: "It would seem upon principle that the oath affirmatively relied upon to contradict and disprove the oath of the accused must positively contradict." The testimony of Mrs. Graves must be taken in its entirety, and not merely her direct testimony considered.

The appellant and Harvey Graves being called as witnesses, testified that they returned to Tennyaltown upon the car leaving Georgetown at 12 o'clock. An apparently disinterested witness, Martha Hurdle, testified that she boarded a car in Georgetown about 11.30 p. m. to return to her home in Tennyaltown and that the appellant, Parker, and Graves were on the same car, and rode as far as Tennyaltown where all three got off together. The testimony of these witnesses, however, may be disregarded because we base our conclusion upon the failure of the Government to make out a case warranting its submission to the jury.

Furthermore, we think the proof of corroborating circumstances is insufficient. The circumstances relied upon consist of the testimony of a police officer that on the night in question he saw Parker in Cleveland Park about 11.25 and left him about 11.30 p. m. going in the direction of the electric railway station; that it was about ten minutes' walk from the place where he met Parker to the railway station at 32d and M streets, Georgetown. The time is not given with exactness, and it is not shown that Parker could not have reached Georgetown in time to have taken the car leaving there about midnight. The other circumstance relied on is proven by the testimony of a conductor on the Tennyaltown and Georgetown Railway line and two passengers who testified that Parker was ejected from a car going from Georgetown to Tennyaltown for failure to pay his fare. This ejection is stated to have taken place at a watering tank, fourteen minutes' ride from Georgetown. The officer testified that it occurred at either 9.15 or 10.15 o'clock on that evening, while the two passengers testified that it occurred about 10.30 o'clock. This testimony shows how uncertain is evidence relative to the time of a certain occurrence even when given by presumably intelligent men, one of whom at least must have had a timepiece with him.

While we recognize the enormity of the crime of perjury, we must also be mindful that an accused person should not be convicted of that crime except upon sufficient evidence. In our opinion the court below should have granted the appellant's prayer made at the conclusion of all the evidence that the jury be instructed to return a verdict of not guilty. The failure to grant this motion is the single assignment of error in this case. For this error the judgment must be reversed and the cause

remanded for further proceedings not inconsistent with the opinion of this court.  
Reversed.

**Elevator.**—One maintaining a passenger elevator for use of tenants and their customers is held, in *Edwards v. Manufacturer's Building Co. (R. I.)*, 2 L. R. A. (N. S.), 744, not to be a common carrier, but only bound to exercise reasonable care. The question of liability for injury to elevator passenger is considered in a note to this case.

#### RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

#### Legal Notices.

##### FIRST INSERTION.

##### Erskine Gordon, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of John A. Bryan, Deceased.

No. 18,864. Administration Docket.—

Application having been made herein for letters of administration on said estate, by Washington Safe Deposit Company, Incorporated, it is ordered this 28th day of August, A. D. 1906, that Samuel M. Bryan, and all others concerned, appear in said court on Monday, the 1st day of October, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WEN-  
[Seal] DELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 35-3t

##### Wolf & Cohen, Attorneys

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Jacob J. Appich, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of August, 1906. CAROLINE APPICH, care of Wolf & Cohen. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,867. Administration. [Seal.] 35-3t

##### Wolf & Cohen, Attorneys

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Patrick H. Riley, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of August, 1906. SIMON WOLF, care of Wolf & Cohen, Attorneys, 14th and G sts. N.W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,811. Admn. [Seal.] 35-3t



**Legal Notices.****George H. Lamar, Solicitor.**

In the Supreme Court of the District of Columbia.  
**Edwin E. Overholt v. William B. Matthews, Dudley A. Tyng, C. Pruyn Stringfield, and The Overholt Railway Signal Company, a Corporation under the laws of the State of West Virginia.**

In Equity, No. 26,234. Doc. 58.

On motion of the plaintiff, by George H. Lamar, his attorney, it is, this 29th day of August, 1906, ordered that the defendants, Dudley A. Tyng and C. Pruyn Stringfield, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter, The Washington Times, and The Washington Post; otherwise the cause will be proceeded with as in case of default. The object of this suit is to secure against defendants, Matthews, Tyng, and Stringfield, an accounting and discovery in respect to a certain invention, and the stock of defendant corporation, and the proceeds arising from the disposition of a part thereof, the production and surrender of all books and papers of defendant corporation, an injunction restraining the sale or the transfer of certain stock of defendant corporation, and an order requiring the surrender and transfer thereof to complainant upon terms of equity, and for general relief. By the Court:

[Seal] **WENDELL STAFFORD, Justice.** True copy.

Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 35-3t

**A. H. Bell, Attorney**

**Supreme Court of the District of Columbia,  
 Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Caroline Lochboehler**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of August, 1906. **NICHOLAS LOCHBOEHLER**, Conduitt Road, D. C. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,784. Administration. [Seal.] 35-3t

**Samuel Maddox, Solicitor**

In the Supreme Court of the District of Columbia.  
**Mary Maguire v. Mary T. Diggins et al.**

No. 24,565. Equity.

**Samuel Maddox, Francis H. Stephens, and Leon Tobriner**, trustees, having reported the sale to Catherine Quigley of the east twenty-one and sixty-seven hundredths (21.67) feet front of lot four (4) in square four hundred and seventy in the city of Washington, District of Columbia for the sum of eleven hundred and fifty dollars (\$1,150.00), it is, this 28th day of August, A. D. 1906, ordered that said sale be and it is finally ratified and confirmed unless cause to the contrary be shown on or before the 28th day of September, A. D. 1906. Provided a copy of this order be published once a week for three successive weeks before said last-mentioned date in The Washington Law Reporter. By the Court: **WENDELL P. STAFFORD, Justice.** True copy.

Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 35-3t

**Wm. A. McKenney, Attorney**

**Supreme Court of the District of Columbia,  
 Holding a Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Philo J. Lockwood**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 24th day of September, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 27th day of August, 1906. **AMERICAN SECURITY AND TRUST COMPANY**, by **James F. Hood**, Secretary, by **Wm. A. McKenney**, Attorney. Attest: **M. J. GRIFFITH**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,108. Adm. [Seal.] 35-3t

**Legal Notices.****Wm. A. McKenney, Attorney**

**Supreme Court of the District of Columbia,  
 Holding a Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Alexander M. Bell**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 24th day of September, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 27th day of August, 1906. **AMERICAN SECURITY AND TRUST COMPANY**, by **James F. Hood**, Secretary, by **Wm. A. McKenney**, Attorney. Attest: **M. J. GRIFFITH**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,130. Administration. [Seal.] 35-3t

**Ralston & Siddons, Attorneys**

**Supreme Court of the District of Columbia,  
 Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Ferdinand Weller**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 27th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of August, 1906. **FERDINAND A. WELLER**, 2020 15th st. N. W. Attest: **M. J. GRIFFITH**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,879. Administration. [Seal.] 35-3t

**Lewis F. Lindal, Attorney**

**Supreme Court of the District of Columbia,  
 Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **William W. Stone**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of August, 1906. **C. E. KING**, 1803 14th st. N. W. Attest: **M. J. GRIFFITH**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,836. Administration. [Seal.] 35-3t

**Samuel Maddox, Attorney**

**Supreme Court of the District of Columbia,  
 Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Hugh J. Kress**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 14th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of August, 1906. **GEO. E. BARBER**, 426 11th st. S. W. Attest: **M. J. GRIFFITH**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,866. Administration. [Seal.] 35-3t

**John E. Laskey and Harvey Given, Solicitors**

In the Supreme Court of the District of Columbia,  
 Holding an Equity Court.

**Roberta A. Myers, Complainant, vs. Willard H. Myers et al., Defendants.** Equity. No. 26,311.

The object of this suit is to procure a divorce from the defendant, **Willard H. Myers**, on the ground of adultery. On motion of the complainant, it is, this 27th day of August, A. D. 1906, ordered that the defendant, **Willard H. Myers**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default.

[Seal] **WENDELL P. STAFFORD, Justice.** True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 35-3t

**Legal Notices.**

**Victor H. Wallace, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**  
**Estate of Cyrus Snyder, Deceased.**  
**No. 13,850. Administration Docket—**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Julia N. Snyder, the wife of the decedent, and the executrix named in said last will and testament, it is ordered, this 29th day of August, A. D. 1906, that Charles C. Snyder, and all others concerned, appear in said court on Monday, the 8th day of October, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WEN-  
 [Seal] DELLE P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 85-St

**SECOND INSERTION.**

**Wilton J. Lambert, Ralston & Siddons, George F. Williams, and Alex. H. Bell, Solicitors**

**In the Supreme Court of the District of Columbia.**  
**Laura G. Robinson v. Francis H. Stephens et al.**  
**Equity No. 23,121.**  
**The Central National Bank v. Walter F. Hewett et al.**  
**Equity No. 24,743.**

Upon consideration of the reports of the trustees in the above entitled causes and the petition of Ben Schwartz in Equity No. 24,743, it is, this 6th day of August, A. D. 1906, ordered, adjudged, and decreed that the sale of lots 78, 79, 80, and 81, in Robert C. Hewett's subdivision of lots in square 448, as per plat recorded in liber 12, folio 26, of the records of the surveyor's office of the District of Columbia, reported by said trustees to Ben Schwartz for eleven thousand three hundred and seventy-five dollars (\$11,375), be finally ratified and confirmed, unless cause to the contrary be shown on or before the 10th day of September, 1906; and provided a copy of this order be published once a week for three successive weeks before said day in The Washington Times, The Washington Law Reporter, and the Washington Post. By the  
 [Seal] Court: JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 84-St

**A. H. Bell, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John D. J. O'Connor, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of August, 1906. ROBERT LEE MONTAGUE, 617 La. ave. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,867. Administration. [Seal.] 84-St

**Wm. D. Hoover, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Richard Crowther, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of August, 1906. THE NATIONAL SAFE DEPOSIT, SAVINGS AND TRUST COMPANY, of the District of Columbia, by Wm. D. Hoover, Second Vice-President. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,601. Administration. [Seal.] 84-St**

**Legal Notices.**

**Walter C. Clephane, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Henry A. Vieth v. City and Suburban Railway Co. et al.**  
**No. 26,249. Equity Doc. 68.**

The object of this suit is to compel a conveyance to the complainant of the real estate hereinafter described, and, if necessary, to substitute a trustee or trustees to make such conveyance; also to secure a mandatory injunction requiring the City and Suburban Railway Company to abandon its occupancy of said real estate and to pay complainant for its illegal use thereof. Said real estate is situated in the County of Washington, in the District of Columbia, and is described as follows, to wit: So much of that strip of land designated as Rhode Island avenue as extended by the Commissioners of the District of Columbia and lying between the lines of said avenue if extended so far, being in the center of said avenue and in width sixty-four (64) feet, and as long as the portion of said avenue extended is enclosed within the metes and bounds of the property known as lot six (6) in John B. Kibbey's subdivision of his farm called "Granby," situate on Brentwood road in the county and District aforesaid, according to a plat attached to and recorded with a deed in liber, J. A. S., No. 84, at folio No. 877, one of the land records of the District of Columbia. On motion of the complainant, it is, this 21st day of August, 1906, ordered that the defendants, Chauncey C. Bestor, Mary M. Potts, Anna B. Doyle, Ellen Berry, and William Kealey Schoepf, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post before said day. WENDELL P. STAFFORD, Justice.  
 True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 84-St

[Filed August 20, 1906. J. R. Young, Clerk.]  
**M. J. Keane and D. W. O'Donoghue, Solicitors**  
**In the Supreme Court of the District of Columbia,**  
**Holding Equity Court.**  
**Peter A. Drury et al. v. The Unknown Heirs, Alienees, and Devisees of George Peter, Deceased. Equity,**  
**No. 25,273. Doc. 56.**

The object of this suit is to perfect the title of the following-described property located in the city of Washington, District of Columbia, and known on the ground plan or plat of said city as the east one-half of lot twenty-five (25), in square one hundred (100), and more particularly described as follows: Beginning for the same at the northeast corner of said lot and running thence west twenty-five (25) feet, five and one-half (5½) inches; south one hundred (100) feet, nine and one-half (9½) inches; thence east along the rear of lot twenty-five (25) feet, five and one-half (5½) inches; thence north one hundred (100) feet, nine and one-half (9½) inches to the beginning. On motion of the complainants, by their solicitors, Michael J. Keane and Daniel W. O'Donoghue, it is, this 20th day of August, 1906, ordered that the defendants, the unknown heirs, alienees, and devisees of George Peter, deceased, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of the period of publication herein after described; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and The Washington Post once a week for three successive weeks before said return day. WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 84-St

**Wm. D. Hoover, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary M. Turner, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of August, 1906. THE NATIONAL SAFE DEPOSIT, SAVINGS, AND TRUST COMPANY, of the District of Columbia, by Wm. D. Hoover, Second Vice-President. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,751. Administration. [Seal.] 84-St**

**Legal Notices.**

**Ralston & Siddons, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of **Francis H. Smith**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **21st day of August, A. D. 1907**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this **21st day of August, 1906**. **E. QUINCY SMITH**, Bond Building. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,576. Administration. [Seal.] 84-8t

**Charles W. Darr, Attorney**

**In Justice's Court of the District of Columbia,**  
**Subdistrict No. 3.**  
**Dennis W. Magrath, Plaintiff, v. Emory B. Buzhardt,**  
**Defendant. No. 8951.**

The object of this suit is to recover two hundred and forty-two dollars and fifty cents, with interest and costs of suit, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this **21st day of August, 1906**, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. **THOS. H. CALLAN**, Justice of the Peace, 627 F st. N. W. [Seal.] 84-8t

**George Francis Williams, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Parthenia Jones**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **20th day of August, A. D. 1907**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this **20th day of August, 1906**. **MILES JONES, FLOYD E. DAVIS**. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,859. Administration. [Seal.] 84-8t

**W. C. Martin, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Solomon G. Brown**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **9th day of August, A. D. 1907**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this **9th day of August, 1906**. **LUCINDA A. BROWN, Hillsdale, D. C.** Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,851. Administration. [Seal.] 84-8t

**Alex. H. Bell, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Patrick Crowe**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **20th day of August, A. D. 1907**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this **21st day of August, 1906**. **JOHN W. CROWE**, 704 T st. N. W. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,809. Administration. [Seal.] 84-8t

**Legal Notices.**

**Frank W. Hackett, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Samuel Donelson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **2d day of August, A. D. 1907**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this **22d day of August, 1906**. **JESSIE LOUISE DONELSON**, 1751 Church street. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,849. Administration. [Seal.] 84-8t

**THIRD INSERTION.**

**Phillip S. Ball, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Sarah Cruikshank**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **22d day of June, A. D. 1907**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this **18th day of August, 1906**. **KATE CRUIKSHANK**, 3148 F st. N. W. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,737. Administration. [Seal.] 83-8t

**Robert S. Hume, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Frank Hume**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **23d day of July, A. D. 1907**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this **10th day of July, 1906**. **EMMA P. HUME**, 1235 Mass. ave., N. W. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,817. Administration. [Seal.] 83-8t

**J. J. Waters, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Joseph Pearson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **15th day of August, A. D. 1907**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this **15th day of August, 1906**. **SARAH J. POINTON**, 120 Seaton st. N. W. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,786. Administration. [Seal.] 83-8t

**George E. Fleming, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration d. b. n. c. t. a. on the estate of **Charles Anthony Schott**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **15th day of August, A. D. 1907**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this **16th day of August, 1906**. **MINNA SCHOTT**, 212 First st. S. E. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 10,329. Admn. [Seal.] 83-8t

**Legal Notices.****L. Melendez King, Solicitor**

In the Supreme Court of the District of Columbia.  
**Mamie B. May, Richard M. May, and Turula Cunningham, Complainants, v. William May and Albert May, alias Huff, Respondents.** Equity, No. 28,389.

On motion of complainants, by their solicitor, L. Melendez King, it is, this 10th day of August, A. D. 1906, ordered that the defendants, William May and Albert May, alias Huff, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter, The Washington Post and The Evening Star prior to said return day, and the order passed herein on August 8th, 1906, is for naught held. The object of this suit is to make partition by sale of the following-described real estate in the city of Washington, District of Columbia, to wit: Sublot lettered "F" in square numbered five hundred and seventy-seven (577), belonging to the estate of Felix May, deceased, to divide the proceeds thereof among the heirs of said Felix May, and to appoint trustees therefor.  
 [Seal] **JOB BARNARD, Justice.** A true copy.  
**J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk.**

83-St

**Geo. Francis Williams, Attorney**

Supreme Court of the District of Columbia,  
 Holding Probate Court.  
**Estate of Thomas F. Corridon, Deceased.**  
 No. 13,806. Administration Docket 35.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate by Margaret O'Connell, it is ordered, this 14th day of August, A. D. 1906, that Josephine Corridon, Nellie Mattson, Kathryn Corridon, Philip Corridon, and Mary Corridon, and all others concerned, appear in said court on Monday, the 17th day of September, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be  
 [Seal] not less than thirty days before said return day. **JOB BARNARD, Justice.** Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.

83-St

**Clarence E. Dawson, Attorney**

Supreme Court of the District of Columbia,  
 Holding Probate Court.  
**Estate of John W. Frost, Deceased.**  
 No. 13,848. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Charles P. Grandfield, it is ordered, this 16th day of August, A. D. 1906, that Charles D. Frost, and all others concerned, appear in said court on Wednesday, the 19th day of September, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **JOB BARNARD, Justice.** Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.

83-St

**Robinson White, Attorney**

Supreme Court of the District of Columbia,  
 Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Andrew Wunder, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of August, 1906. **ELIZABETH WUNDER, 212 7th st. S. W.** Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,889. Administration. [Seal.]

83-St

**Legal Notices.****Chas. F. Benjamin, Solicitor**

In the Supreme Court of the District of Columbia.  
**Denis E. Conroy v. Unknown Heirs of Charles Carroll, Junior.** Equity No. 26,807. Docket 58.

The object of this suit is to establish title by long and adverse possession to original lot 8, in square numbered 699, of the city of Washington, D. C., situate at the northeast corner of Second and P streets southwest. On motion of the complainant, and it appearing that diligent efforts have heretofore been made to find the defendants hereto, it is, this 14th day of August, 1906, ordered that the defendants, being the unknown heirs, devisees, and alienees of Charles Carroll, Junior, who owned the said realty in or about the year 1794, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published in The Washington Law Reporter and The Washington Times once a week for three successive weeks before the return day herein named. By the Court: **JOB BARNARD, Justice.** A true copy.  
 [Seal] Test: John R. Young, Clerk, by F. E. Cunningham, Asst. Clerk.

83-St

**Wilton J. Lambert, Attorney**

In the Supreme Court of the District of Columbia,  
 Holding a Special Term for Probate Business.  
**In re the Estate of Eoccon Brignole, Deceased.**  
 Probate, No. 13,885.

Application having been made herein for the probate of the last will and testament of said deceased, bearing date the 2d day of March, A. D. 1906, and for letters testamentary on said estate, by Louise Brignole, the executrix named therein, and summons having been issued against the parties hereinafter mentioned, and having been returned not to be found as to each of them, it is, this 17th day of August, 1906, ordered that Antonio Brignole, Bartholomeo Brignole, Ambrogio Brignole, Pietro Brignole, Maria Cuari, Augustina Brignole, Annunziata Brignole, and Anna Fuguzzi, and all others concerned, appear in said court on Monday, the 24th day of September, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice be published in The Washington Law Reporter and The Washington Times once for three successive weeks before the return day, the first publication to be not less than thirty (30) days before said return day. By the Court: **WENDELL P. STAFFORD, Justice.** Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.

83-St

**Robert S. Hume, Attorney**

Supreme Court of the District of Columbia,  
 Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Walton Goodwin, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of August, 1906. **BILLY WALKER GOODWIN, 1516 F st.** Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,823. Administration. [Seal.]

83-St

**F. G. Coldren, Attorney**

Supreme Court of the District of Columbia,  
 Holding Probate Court.

**Estate of Michael O'Hearn, Deceased.**  
 No. —. Administration Docket —.

Application having been made herein for letters of administration on said estate, by William O'Hearn, it is ordered, this 11th day of August, A. D. 1906, that Benjamin Vandervoort and Mary Frances Vandervoort, and all others concerned, appear in said court on Friday, the 21st day of September, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be  
 [Seal] not less than thirty days before said return day. **JOB BARNARD, Justice.** A true copy.  
 Attest: Wm. C. Taylor, Deputy Register of Wills.

83-St

# The Washington Law Reporter

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### Resignation of Mr. Justice Duell.

The announcement that Mr. Justice Charles H. Duell, of the Court of Appeals of this District, had tendered his resignation as a member of that court came as a surprise to the bar of the District, and general regret is expressed at his retirement. Mr. Justice Duell was appointed to the bench of the Court of Appeals in December, 1904, to fill the vacancy created by the promotion of Mr. Justice Shepard to be chief justice of the court in succession to Mr. Chief Justice Alvey, and while his term of service has been quite brief, he had come to be highly esteemed by the bar, both as a man and a judge. He came to the bench after a distinguished career at the bar, especially in the practice of patent law, and had also for several years filled the office of Commissioner of Patents, discharging its duties with rare ability. The important appellate jurisdiction exercised by the Court of Appeals in respect of the decisions of the Patent Office made his membership with the court of especial value.

Upon his retirement from the bench it is stated that Mr. Justice Duell will become a member of the firm of Warfield & Duell, patent attorneys, with offices in New York City, of which

firm he was the senior member prior to his appointment to the Court of Appeals.

No indication has as yet been given as to who will succeed him, though the names of several of the present justices of the Supreme Court of the District and of prominent members of the bar have been mentioned in connection with the vacancy.

### The Decisions of the Court of Appeals.

With the opinions reported in this issue we conclude our report of the cases decided by the Court of Appeals of this District from October, 1905, to the adjournment of the court in June, 1906. The report includes all the opinions delivered by the court, except those in patent cases, which are contained in the Official Gazette of the Patent Office. The volume of business transacted by the court during the year has been exceptionally heavy, and the report of the opinions delivered will require not less than two and perhaps three volumes of reports of ordinary size. The value to the bar of this District of THE WASHINGTON LAW REPORTER is evidenced in part by the fact that the opinions of the court in these cases, except in patent causes (which, as above stated, are contained in the Official Gazette), as well as in a number of cases decided prior to the adjournment of the court in June, 1906, are at the present time reported only in the columns of THE LAW REPORTER.

Beginning with the October term of the court it is our purpose to add what we believe will be found to be a valuable feature of our reports, and from time to time make note of matters disposed of by the court where no written opinion is filed. Interesting points of practice are at times thus disposed of, and we shall endeavor to place them before our readers in serviceable form.

### Master and Servant—Safe Place to Work.

A peculiar case in which liability for personal injuries was sought to be predicated upon the ground that the relation of master and servant existed, is that of Walker v. Gleason, recently decided, and reported 98 N. Y. Supp., 843. It appeared in that case that a landlord had contracted with a tenant to keep the hall lamps in the building in order, and that while she was engaged in working with the lamps in one of her own rooms, the ceiling fell and injured her. Under these circumstances, it was contended on her behalf that the landlord was liable because, as an employer, he had failed to furnish a safe place to work; but the court held that the landlord was not liable on that ground.

### Street Railways—Injury to Passengers.

In Hayne v. Union Street Railway Co., decided by the Supreme Judicial Court of Massachusetts (78 N. E., 219), it appeared that a dead hen was thrown by the conductor of a street-car at the motorman of another car with such inaccuracy that the corpse struck a window, which broke and injured a passenger. The court held that, as a carrier is absolutely liable for injuries to a passenger caused by the misconduct of its servants, the passenger injured because of the occurrence mentioned was entitled to recover from the street-car company.

## Court of Appeals of the District of Columbia.

WILLIAM W. HAMILTON, APPELLANT,  
v.  
UNITED STATES.

HOMICIDE; INDICTMENT; WITNESSES; EXPERT, COMPETENCY OF; VARIANCE; INSTRUCTIONS.

1. The definition of murder, as contained in sec. 798, Code D. C., is the common law definition of that crime.
2. An indictment, under sec. 798 of the Code, for murder, charging that the defendant feloniously, purposely, and of premeditated malice made an assault upon B, and with both hands choked, suffocated, and strangled her, of which choking, strangling, and suffocation she instantly died, is not defective, for want of an express allegation of an intent to kill, or in failing to charge that the choking, strangling, and suffocation causing the death was "mortal."
3. The use of the word "mortal" in the description of the crime is not necessary in indictments for murder by choking, strangling, and suffocation.
4. Whether a witness is competent to testify as to any matter of opinion is always a preliminary question for the trial judge, and his decision thereon is conclusive unless clearly erroneous as matter of law.
5. A medical student, not yet a graduate physician, who had attended lectures on mental diseases, and had been for two years hospital steward at the District Jail, held not competent to testify as an expert respecting the mental condition of the accused at the time of the homicide, the witness having first seen him soon thereafter.
6. A witness who had been a practicing physician for twenty years, physician at the jail for ten years, and for a year physician at the Washington Asylum, who had made a study of mental disorders and had an average of fifteen cases of insanity under his observation each year, and who had the accused constantly under observation for nearly a year and had made five formal examinations of him, held competent to testify as an expert as to accused's mental condition, notwithstanding his disclaimer of expert knowledge on the subject of insanity.
7. The proof of the means of commission of the homicide need not conform strictly with the averment of such means in the indictment; but it is sufficient if it agrees in substance with that charged.
8. Proof that the strangling and choking causing death was effected by placing a scarf about the neck of the deceased, whereas the charge in the indictment is that it was done with the hands, does not constitute a material variance.
9. It is not error to refuse a requested instruction when there is no evidence to sustain it.

No. 1616. Decided December 12, 1905.

APPEAL by defendant from a judgment and sentence of the Supreme Court of the District of Columbia, holding a Criminal Court, upon a verdict duly finding him guilty of murder in the first degree. Affirmed.

*Mr. Levi H. David* for the appellant.

*Mr. D. W. Baker, Mr. C. H. Turner, and Mr. J. C. Adkins* for the United States.

Mr. Justice McCOMAS delivered the opinion of the Court:

The appellant was indicted for the murder of Mary Elizabeth Butler, otherwise known as Lizzie Lyman, and was tried and convicted of murder in the first degree. A motion in arrest of judgment was overruled and the appellant was sentenced by the Supreme Court of this District to be hanged, and he has taken this appeal.

1. The appellant assigns as error that the court below erred in overruling the motion in arrest of judgment, because the indictment fails to legally charge the crime of murder in the first degree; because—

First, the indictment fails to charge that the killing was done with intent to kill.

Second, the indictment fails to allege that the choking, suffocating, and strangling, wherefrom it is averred that Mary Elizabeth Butler, known as Lizzie Lyman, "then and there instantly died," was "mortal."

The Code (sec. 798) declares:

"Whoever, being of sound memory and discretion, purposely, and either of deliberate and premeditated malice (or by means of poison, or in perpetrating or in attempting to perpetrate any offense punishable by imprisonment in the penitentiary), kills another is guilty of murder in the first degree."

This court in *Hill v. United States*, 22 App. D. C., 395, 401, decided that the common law of crimes as it existed in the State of Maryland in 1801, was declared to be in force in this District by the act of Congress of February 27, 1801, and that it has remained in force here ever since. By express provision it is retained and made to coexist with the provision of the Code in all respects except where it has been repealed or modified by statutory provision. The common law procedure in all matters relating to crime was in force at the date of the cession of this District by the State of Maryland, and still continues in force here in all cases except where special provision is made by statute to the exclusion of the common law procedure. All crimes, therefore, and other appropriate and settled forms of procedure for enforcement, known to the common law, except as otherwise provided by statute, are still in force in this District.

The definition of murder in section 798 of the Code is the common law definition of the crime. It is not, therefore, a new or statutory definition. The indictment upon which the appellant was tried and convicted, which is in the common law form, is as follows:

"That one William W. Hamilton, late of the District aforesaid, on the twentieth day of June in the year of our Lord one thousand nine hundred and four and at the District aforesaid, with force and arms in and upon a certain Mary Elizabeth Butler, otherwise called Lizzie Lyman, in the peace of God and of the said United States then and there being, feloniously, purposely and of his deliberate and premeditated malice did make an assault, and that he, the said William W. Hamilton, with both of the hands of him, the said William W. Hamilton, about the neck of the said Mary Elizabeth Butler, otherwise called Lizzie Lyman, and her the said Mary Elizabeth Butler, otherwise called Lizzie Lyman, then and there feloniously, purposely and of his deliberate and premeditated malice did choke, suffocate and strangle; and that the said William W. Hamilton, a certain necktie about the neck of her, the said Mary Elizabeth Butler, otherwise called Lizzie Lyman, then and there feloniously purposely and of his deliberate and premeditated malice did fix, tie and fasten, and that the said William W. Hamilton with the necktie aforesaid, the neck of her, the said Mary Elizabeth Butler, otherwise called Lizzie Lyman, then and there feloniously purposely and of his deliberate and premeditated malice did further choke, suffocate and strangle; of which said choking, suffocat-



ing and strangling of the neck of her the said Mary Elizabeth Butler, otherwise called Lizzie Lyman, by both of the hands of him, the said William W. Hamilton, as well as by the said necktie, she, the said Mary Elizabeth Butler, otherwise called Lizzie Lyman, then and there instantly died.

"And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said William W. Hamilton, the said Mary Elizabeth Butler, otherwise called Lizzie Lyman in the manner and by the means aforesaid, then and there, feloniously, purposely and of his deliberate and premeditated malice did kill and murder; against the form of the statute in such case made and provided, and against the peace and Government of the United States."

The appellant insists that this indictment merely charges that the defendant feloniously, purposely, and of his deliberate and premeditated malice made an assault upon Mary Elizabeth Butler, and with both hands choked, suffocated, and strangled her, and with a necktie further choked, suffocated, and strangled her, of which choking, suffocating, and strangling of the neck of her, by both of the hands of him, as well as by said necktie, she instantly died. The appellant insists that the indictment fails to charge that the defendant feloniously, purposely, and of his deliberate and premeditated malice killed Mary Elizabeth Butler, and that the intent to kill must be so directly averred to constitute this a legal indictment for murder in the first degree.

The class of cases supporting the appellant's contention appear to be decisions of States in which there are no crimes or misdemeanors by the common law. In Ohio, for instance, "there are no crimes or misdemeanors by the common law." *Fouts v. The State*, 8 Ohio St., 111. In the same case it is said (Ib., 112):

"It may, therefore, be assumed as well settled that murder in Ohio is different from murder by the common law of England, not simply in the fact of the two degrees into which it is divided, but especially and most essentially, in the fact that a *purpose or intent to kill* is made by the statute an essential and distinguishing feature of murder, both of the first and also of the second degree. It follows that an indictment for murder, under the statute of this State, must contain a direct averment of a *purpose or intent to kill* in the description of the crime charged."

And further (Ib., 115): "This, however, not being the case in murder at common law, the form of indictment for murder in England and in those States in which the statutes have simply adopted the common law definition of murder, very properly omits a direct charge of a purpose or intent to kill as a part of the overt act alleged as the crime."

So, in Iowa, where it is held essential to allege that the killing of the deceased was wilful, deliberate, and premeditated, the court remarked that in Iowa there are no common law crimes, and the criminal code is entirely statutory. *State v. McCormick*, 27 Iowa, 409.

In *The State v. Watkins*, 27 Iowa, 418, it is said: "Since our statute has narrowed the field of murder punishable with death (murder in the first degree) and excluded therefrom certain

homicides, which were murder at the common law, an indictment for murder at common law would not necessarily include the charge of murder in the first degree under our statute; for murder at the common law might have been committed without wilful, deliberate, and premeditated *intent to kill*, required by our statute to constitute murder in the first degree."

On the other hand, Mr. Wharton, sec. 393, 1 Wharton's Criminal Law, 10 ed., says:

"Under the statutes a common law indictment for murder is sufficient to sustain a verdict of guilty of murder either in the first or the second degree. It being held, as has already been seen fully, that the line separating murder from manslaughter is in no way changed by our statutes; and it being further seen that murder in the second degree is simply murder at common law, with certain aggravating features discharged, it follows that on a common law indictment for murder a verdict of murder either in the first or in the second degree can be sustained. So, indeed, have our courts, in many instances, ruled."

And Mr. Wharton concludes that it is no more reasonable to require "a specific intention to take life" to be specially averred than it is to require "sanity" to be specially averred.

Pennsylvania was the first State to make the statutory distinction between the degrees of murder, and the statute has been reproduced in a majority of the States of the Union, and substantially appears in our Code.

In Maryland (*Davis v. The State*, 39 Md., 381) the court, reciting the States which have enacted laws distinguishing murder at common law by degrees, says, speaking of a common law indictment for murder whereon Davis had been convicted of murder in the first degree:

"Upon a review of these statutes in the States first mentioned, and the decisions thereon, Wharton announces, that 'it is not necessary, nor is it the practice to designate the grade of the homicide in the indictment, nor that the killing should be charged to be wilful, deliberate, and premeditated,' etc."

We have examined the indictment in the case of *Hill v. The United States*, 22 App. D. C., 402; 31 Wash. Law Rep., 552, before cited, which indictment was held to be good by this court. It is a common law indictment for murder in all respects like the indictment in the case before us except that it describes the instrument in that case, the pistol shot wound as a "mortal" wound. We hold that the indictment we are now considering, like that in *Hill v. United States*, is not defective for want of an express allegation of an intent to kill. *Davis v. Utah Ter.*, 151 U. S., 270.

In the case just cited at page 262, the Supreme Court says:

"The crime defined is that of murder. The statute divides that crime into two classes in order that the punishment may be adjusted with reference to the presence or absence of circumstances of aggravation. . . . As the acts which, under the Utah statute, constitute murder, whether of the highest or lowest degree, constituted murder at common law, it is clear that an indictment good at common law, as an indictment for murder, in whatever mode or under whatever circumstances of atrocity



the crime may have been committed, is sufficient for any degree of the crime of murder under a statute relating to murder as defined at common law, and establishing degrees of that crime in order that the punishment may be adapted to the special circumstances of each case."

These views are substantially sustained by authority. The earliest legislative enactment in this country by which degrees of murder were established was the Pennsylvania statute of April 22, 1794, "for the better preventing of crimes," etc. . . . In the Supreme Court of Pennsylvania, Chief Justice Tilghman said: "Now this act does not define the crime of murder, but refers to it as a known offense; nor so far as it concerns murder in the first degree does it alter the punishment, which was always death. All that it does is to define the different kinds of murder, which shall be ranked in different classes, and be subjected to different punishments. It has not been the practice since the passing of this law to alter the form of indictments for murder in any respect, and it plainly appears by the act itself that it was not supposed any alteration would be made."

Chief Justice Tilghman in the case here quoted (*White v. Commonwealth*, 6 Binney, 183) held good an indictment exactly like the indictment now before us except that the wound mentioned was characterized as "mortal."

The second objection to the indictment, namely, that the choking which caused the death is not described as "mortal" is not fatal to this indictment.

Mr. Bishop in *Directions and Forms*, in his note to section 520, (2d Ed.) says:

"The general rule is distinctly and fully established by authority, that the wound or other injury must, in felonious homicide, be alleged to have been mortal. And so, in general, are the precedents. But in these for choking and strangling, and in those for suffocation, the fact is otherwise. . . . I have examined, with reference to it, large numbers of precedents before me, and I have not found one in which even the word 'mortal' is used."

Mr. Wharton, 1 *Wharton Precedents of Indictments and Pleas* (4th Ed.), in forms 123, 124, 127, and 128, in alleging murder by strangling and choking, in neither instance describes the strangling and choking as "mortal." Where the murder is averred to have been committed by strangling and stabbing, and again where it is charged to have been committed by choking and beating, the forms describe the wounds by stabbing and beating as "mortal," and in the same indictment omit to characterize the choking or strangling as "mortal."

3 Chitty's *Criminal Law*, 756, 767, containing precedents of such indictments for murder, omits to describe the "choking and strangling" as mortal.

In *Rex v. Huggins*, 3 C. & P., 415, Vaughan, Baron, said:

"When it is charged that the prisoner 'feloniously, wilfully, and of her malice aforethought, did wrap up and fold the child in the flannel whereby the child was suffocated, I must understand that to mean wilful suffocation by those means, which is exactly what is intended to be charged in this inquisition.'"

In *People v. Judd*, 10 Cal., 315, Justice Stephen J. Field summarily disposes of the objection to the indictment for murder, in that it did not allege the wound was "mortal," saying:

"The second ground relied upon is frivolous. The allegation that the deceased at the time died of the wound inflicted is a sufficient statement that the wound was mortal."

In the indictment before us charging that the defendant "did choke, suffocate, and strangle Mary Elizabeth Butler; of which said choking, suffocating, and strangling of the neck of her she, Mary Elizabeth Butler, instantly died," the objection to the omission of the word "mortal" seems, indeed, frivolous. Apparently the old and approved authors of criminal precedents believed that when one was suffocated or strangled one was dead, and to have believed, also, that one may be wounded by shooting, stabbing, beating, and bruising and yet live more than a year and a day; and, therefore, to characterize such wounds as "mortal" was to make a material averment; but when one was choked, suffocated, strangled, one then and there instantly died and it was surplusage to allege of such causes of death, necessarily instantaneous, that such were "mortal."

We repeat that when charging such a homicide the accepted books of precedents do not use the word "mortal" as a term of art in the description of murder by strangling, choking, and suffocating. Mr. Bishop found no such forms and we are aware of no cases which say this word "mortal" is a necessary term of description of murder by choking, strangling, and suffocating, and we conclude that the omission of it in this indictment is not error.

2. The fourth assignment of error was the ruling of the court below refusing to permit William B. Hudson to testify as an expert respecting the mental condition of the appellant on June 20, 1904, the time of the homicide, the witness having first seen him soon thereafter.

Hudson, during two years prior to his appearance as a witness, had been hospital steward at the District jail; was then a medical student and not yet a graduate physician and surgeon. He had attended lectures by Dr. Richardson and Dr. White on the subject of mental diseases. Richardson's lectures and lectures by Dr. Rollins, Hudson heard in the course of lectures to the medical school he was still attending.

The court correctly refused to permit Hudson to testify as an expert concerning the mental condition of the appellant at the time of the homicide. Hudson was not competent to so testify. He was offered for that purpose only. Apart from the incompetency of the witness disclosed by the record, this court has said:

"The question as to how much knowledge a witness must possess of a certain science or art in order that his opinion shall be competent evidence is a matter which in the nature of things must be left largely to the discretion of the trial court, and its ruling thereon will not be disturbed unless clearly erroneous." *Bradley v. D. O.*, 20 App. D. O., 173; 30 Wash. Law Rep., 455; *Chateaugay Iron Co. v. Blake*, 144 U. S., 476, 484.

Whether a witness is shown to be qualified to testify to any matter of opinion is always a preliminary question for the judge presiding at the

trial, and his decision thereon is conclusive unless clearly erroneous as matter of law. *Inland & Seaboard Coasting Co. v. Tolson*, 139 U. S., 559, and cases there cited.

The appellate court will not reverse in such a case unless the ruling is manifestly erroneous. *Spring Co. v. Edgar*, 99 U. S., 558, and cases there cited; *Raub v. Carpenter*, 17 App. D. C., 514; 29 Wash. Law Rep., 122; *Lansburg v. Wimsatt*, 7 App. D. C., 271; 23 Wash. Law Rep., 815.

The fifth assignment of error was the court's ruling that Dr. D. K. Shute who had been a practicing physician for twenty years, visiting physician at the District jail for ten years, and a year prior to that physician to the Washington Asylum, who testified he had made a study of mental disorders with an average of fifteen cases of insanity under his observation each year, and who had appellant constantly under his observation during almost a year past and had made five formal examinations of him, was competent to testify as an expert respecting appellant's mental condition. Dr. Shute was clearly competent to testify as an expert in this instance.

"As a general rule physicians and surgeons of practice and experience are experts upon the question of sanity or insanity, and it is not necessary that they should have made a particular disease involved in the inquiry a specialty to render their testimony admissible as that of experts." 1 *Clevenger on Med. Jur. of Insanity*, 546.

Doctor Shute's modest disclaimer of his own competency as an expert is immaterial. That question was for the court to decide, and the court decided correctly upon Doctor Shute's experience as disclosed upon the stand. See *Horton v. United States*, 15 App. D. C., 323; 27 Wash. Law Rep., 706.

3. The second and third assignments of error are because the court below refused to grant the defendant's fourth and fifth prayers. The fourth prayer required the jury before finding the defendant guilty to be satisfied beyond a reasonable doubt that the defendant suffocated the deceased with his hands, as well as by a necktie about her neck.

The proof of the means of commission of a homicide need not conform strictly to the averment of such means in the indictment. If the means of death proved agree in substance with that charged, it is sufficient. 1 *East, P. C.*, 341; 1 *Gr. Ev.*, sec. 65; *Rex v. Bridget Oulkin*, 5 C. & P., 121.

In *State v. John Fox*, 25 N. J. L., 601, it was held that "a variance between the indictment and the evidence as to the instrumental cause of death is not material provided the deceased is proved to have died the same kind of death as is mentioned in the indictment."

The charge of strangling and choking with hands, and facts in testimony that it was effected by placing a scarf around the neck, constitutes no material variance. *Thomas v. Commonwealth (Ky.)*, 20 S. W. Rep., 227.

The learned court below properly refused this fourth instruction.

The fifth prayer was likewise properly refused. It repeats the error of the fourth prayer in requiring the jury to find beyond a reasonable doubt that the deceased came to her death

in the manner and by the means alleged in the indictment. For the reasons just stated such restriction would have been improper.

This defective fifth prayer further asked the court to instruct the jury that "if they find that the defendant delivered a blow to the deceased and she fell and said blow produced her death, then their verdict should be not guilty." Had this prayer been asked as a separate instruction and had it been more carefully worded, its rejection could not have prejudiced the appellant. There was no evidence whereon to found the prayer. The witness, Annie Payne, did testify she was in the alleyway and appellant and deceased went into their rooms, where the witness heard them talking, and the next thing was a blow with a fist or stick. There is no evidence of a fall or of injury to deceased by a fall. The officer, Walker, testified that on the day of the homicide the defendant detailed the incidents and said that he, the defendant, threw the deceased down on the floor, put one knee on each side of her, and choked her with his hands until he thought she was dead. Then he wound a necktie twice around her neck and pulled it as hard as he could, and tied both ends and he let her lie there an hour or so. This is the only account of the homicide in the case. The coroner who performed the autopsy upon the body of the deceased, described the condition of the body to be that of a young and healthy person, who had died by strangulation. His opinion was that she died of asphyxiation, and her death was due to a "constriction around the throat by suffocation." There was a slight hemorrhage about the collar-bone, which might have been due to a blow, but this was not sufficient to have caused death. The coroner was positive the deceased had been suffocated. The hemorrhage was slight, and, if produced by a blow, it must have been slight. There was no other testimony upon the cause of death, and there was no evidence whatever to sustain the instruction asked in the last half of the fifth prayer.

We have disposed of all the questions raised upon this appeal. The charge of the learned court below was just and comprehensive, as well as fair to the appellant.

The judgment and sentence of that court must be affirmed; and it is so ordered.

Affirmed.

**Damages.**—The value of the land is held, in *Doty v. Doty (Ky.)*, 2 L. R. A. (N. S.), 713, to be a proper measure of damages for breach of a parol contract to convey real estate where the vendor has received the consideration for his promise.

Damages for wilful refusal of a telegraph company to pay over money to one entitled thereto are held, in *Western U. Teleg. Co. v. Wells (Fla.)*, 2 L. R. A. (N. S.), 1072, to include compensation for bodily pain and suffering and mental pain and anguish consequent thereon.

Mental distress and bereavement of the father are held, in *Kelley v. Ohio River R. Co. (W. Va.)*, 2 L. R. A. (N. S.), 898, to be an element of damages in an action in his behalf for the death of his son.

## Court of Appeals of the District of Columbia.

ALBERT M. RAYMOND, APPELLANT,

v.

UNITED STATES.

PRACTICE; APPEALS; TRANSCRIPT OF RECORD; ABSENCE OF BILL OF EXCEPTIONS.

1. Whether an order extending the time for settling a bill of exceptions, when regularly applied for, shall be made, is a matter in the discretion of the trial court.
2. On a former appeal in this case the judgment was, at first, ordered to be reversed and a new trial ordered for error of the trial court in receiving additional testimony prejudicial to defendant after the jury had returned their verdict and been discharged. On motion by the United States for rehearing, this court modified its opinion by directing the vacation only of the judgment and sentence, and remanded the case for further proceedings upon the verdict. The minutes of this court contained no recital of an order reversing the judgment and awarding a new trial, but only of the order vacating the judgment and sentence and remanding the cause. The court below entered a judgment in accordance with the mandate of this court, imposing the same sentence. On an appeal from that judgment, held that a motion by appellant to restore to the minutes of this court its order reversing the judgment and awarding a new trial would be denied, as there was nothing upon which it could operate; but the facts recited in order that appellant may have the benefit thereof in any subsequent proceeding.
3. The right of appeal is not dependent upon the appearance in the record of a regular bill of exceptions; and a motion to dismiss an appeal for that reason denied.
4. In such case, the proper motion is to affirm the judgment; and such a motion will be granted where, as, in this case, the judgment was entered by the trial court in accordance with the mandate of this court on a former appeal, it being assumed, in the absence of a bill of exceptions, that the proceedings had in the trial court were in all respects regular.
5. The power to affix the penalty upon conviction is vested exclusively in the trial court, and the appellate court is vested with no jurisdiction in respect of its exercise, provided it does not exceed the statutory limit.

No. 1618. Decided November 23, 1905.

APPEAL by defendant from a judgment and sentence of the Supreme Court of the District of Columbia, holding a Criminal Court, entered upon a verdict finding him guilty of libel. Affirmed.

*Mr. Levi H. David* for the appellant.

*Mr. D. W. Baker* for the United States.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

The appellant was tried in the Supreme Court of the District on an indictment for libel, found guilty, and sentenced to imprisonment in the penitentiary for a term of five years. The transcript of the record on his appeal therefrom was filed October 17, 1905. On October 19 appellant filed a motion under oath, suggesting a diminution of the record, in this, that it failed to show a motion filed by him in the court below, on or about July 24, 1905, for an extension of the term of the court to enable him to procure the signature of the trial justice to a bill of exceptions. This motion prepared by the appellant himself, who is not a lawyer, contains certain recitals relating to the proceedings on the trial, which are not relevant to the subject-matter of the motion and need not be recited. The transcript recites a motion for the extension of the term as filed on September 28,

1905, as part of a paper intended to be a bill of exceptions. There is no recital of any order thereon, nor does it appear that the bill of exceptions therewith was approved by the trial justice. November 2, 1905, the District Attorney, on behalf of the United States, filed a motion in reply, asking to have the appellant's motion stricken from the files because of scurrilous matter therein contained. This was accompanied by an affidavit of the deputy clerk, named in appellant's motion, to the effect that, on or about July 25, 1905, he received through the mail from the appellant his motion aforesaid; that said motion not being presented in the proper manner, the affiant did not file the same, but mentioned it to the trial justice, who was at that time holding the "vacation term" of the said Supreme Court; that said justice instructed him to inform the appellant that he would not extend the time for filing the bill of exceptions and transcript of the record, but that if appellant would file his bill of exceptions with the clerk he, the said justice, would settle and sign the same as of the date of filing; that affiant communicated these facts to the appellant personally, and that the said motion, though among the papers in the clerk's office, had never been filed or made a part of the record. On the same day the District Attorney filed a motion to dismiss the appeal on the ground that the transcript shows that the judgment was entered and the sentence imposed in a regular and formal manner, under the mandate of this court setting aside the former sentence, and that the parts of the transcript reciting the proceedings below in a paper entitled a bill of exceptions, can not be considered, because the said bill of exceptions was never settled or signed by the trial justice. On November 4 the appellant filed another motion entitled "Appellant's cross-motion to deny appellee's motion to expunge from the record the appellant's motion to correct the record in this case." This cross-motion sets up no new facts pertinent in the consideration of the question. On the same day appellant filed another motion in reply to the motion to dismiss his appeal. This contains a lengthy argument undertaking to demonstrate the errors in the proceedings on the first trial of his case, and the illegality of the final proceedings had after the return of the mandate of this court on the determination of his first appeal. On November 7, 1905, the appellant filed another motion asking to have restored to the minutes of this court an order made May 23, 1905, on his first appeal in this case, reversing the judgment below and remanding the cause for a new trial, and also that a certified copy of said original entry of judgment as aforesaid and a copy of the opinion then delivered, in accordance with which said entry was made, be furnished him. On November 8, 1905, the District Attorney filed a motion to affirm the judgment appealed from, based on the facts relating to the condition of the record contained in his motion aforesaid to dismiss said appeal. On November 8 the appellant renewed his motion above referred to as filed November 7, 1905. On the same day appellant filed an argument in reply to the motions of the District Attorney.

All of these motions and counter motions

have been submitted and considered together.

The motion of the appellant suggesting diminution of the record in respect of the omission from the transcript of his motion for an extension of the term to obtain further time for the settlement of the bill of exceptions, must be denied. Had the motion been actually filed on July 24, 1905, or were we to treat its subsequent presentation to the clerk as equivalent thereto, the appellant would be in no better position than he is now, because no order for the extension of the time was made. Whether such an order shall be made, when regularly applied for, is a matter committed to the discretion of the trial justice by the rules of the Supreme Court of the District of Columbia regulating the settlement of bills of exception.

In view of the disposition that must necessarily be made of the case, it is unnecessary to consider the motion to strike out the several motions of the appellant, heretofore mentioned, on account of the scandalous charges therein made.

The motion, hereinabove recited, also relating to the judgment and opinion of this court on a former appeal, will next be considered. The facts are these: The appellant was tried under this indictment on December 8, 1904, and found guilty. His motion for a new trial was overruled on December 23, 1904, and he was sentenced to imprisonment in the penitentiary for a term of five years. From this he appealed. On May 23, 1905, the judgment was reversed and an order to that effect made.

No error was found in the proceedings on the trial in the court below before the return of the verdict and the judgment approving the same, but as the bill of exceptions showed that after judgment was rendered and before sentence, the court had heard certain evidence relating to the conduct of the defendant, this court considered that this was error which required the reversal of the judgment and the award of a new trial. The opinion then delivered so declared.

Within the time permitted by the rules of this court, the United States moved for a rehearing. Coming to the conclusion that the error committed by the court in hearing the evidence aforesaid did not warrant a judgment of reversal setting aside the verdict and ordering a trial *de novo*, but only the judgment sentencing the defendant, this court modified its former opinion, substituting for the third and last paragraph thereof the following:

"But there is a feature of this case, which, although not noticed by either side in argument, we can not ignore. It is the proceeding which was had after the verdict and when the defendant was called for sentence. At that time the prosecution, for what reason is not entirely apparent, reopened the case, without the presence of the jury—which, of course, had been discharged—and adduced testimony in continuation of that which had been adduced at the trial, and this to contradict the defendant's testimony and to break down his defense. This we must regard as a grave irregularity. It was a trial of the defendant before the court, and not before the jury, to which he was entitled; and he justly objected to it, and reserved his exception to the novel proceeding.

"Of course, it is not an unknown proceeding, although an unusual one, for the court, before pronouncing sentence, to receive suggestions, and even to make inquiry that would result in the mitigation or the aggravation of the punishment to be imposed—more frequently, however, in mitigation than in aggravation, and the express purpose of the inquiry then usually addressed to the defendant—whether he has anything to say why the sentence of the law should not be imposed upon him—has this very end in view. At that time the defendant may plead a pardon, or insanity, or any other matter that would make it improper to give effect in judgment to the verdict of guilty that has been rendered by the jury, or he may protect his innocence or his previous good character or his peculiar circumstances, or any other matter that would tend to make his punishment lighter than it might otherwise be. But we have never understood that a cause might be retried at this stage of the proceedings, either in whole or in part, before the court, instead of the jury.

"It is very true that the defendant had already been found guilty and the additional proof now introduced could add no greater efficacy to the verdict. But it could influence the court against the defendant, and it undoubtedly had that effect in the severity of the sentence that was rendered; and it being a part of the case against him, the defendant had the right to have it passed upon by the jury. We believe that it is not unusual in the English practice, and not unknown in our American practice, that the court after verdict may examine into the prisoner's record, and even take testimony in regard to his previous character as a law-abiding citizen, or the contrary, although we do not hold that such practice is proper in this jurisdiction; but it does not seem to be just to an accused person that issues in the very case in which he has been found guilty should be taken up again before the court and retried without the presence of the jury. We think that it was an irregularity to do this in the present case, for which the judgment and sentence of the court should be vacated.

"The cause will be remanded to the Supreme Court of the District with directions to vacate its judgment and all the proceedings had after the verdict of the jury, and to proceed *de novo* upon such verdict; and it is so ordered."

The following additional opinion was then given on June 13, 1905:

"A motion for rehearing has been made in this case; and while said motion will not be allowed, we deem it proper so far to modify the opinion and judgment heretofore rendered by this court as to provide that only the judgment and sentence of the court below, and the proceedings had in the cause after verdict, shall be vacated, and that the cause shall be remanded for further proceedings therein upon the verdict in accordance with law and the opinion of this court; and it is so ordered." See *Raymond v. U. S.*, 25 App. D. C., 555; 33 Wash. Law Rep., 514. The former judgment modified in accordance with this conclusion was then entered, and the mandate sent to the court below recited the same.

As there is no recital in the minutes of an order reversing the judgment on the former

appeal and directing a trial *de novo*, there is nothing upon which this motion can operate, and it must be denied.

It would, no doubt, be the better practice, where a judgment once delivered has been set aside wholly, or in part, or modified, on a motion for rehearing, to permit the same, and the opinion in accordance with which it was delivered to stand unaltered, and subsequently to enter the final judgment vacating or modifying the former one, in accordance with an additional opinion to that effect. Had this practice been followed in this case, the interests of the appellant would not be affected, for a copy of the vacated or modified order would be of no possible advantage to him in the consideration of his appeal. As it was not followed, the foregoing statement of the facts relating thereto has been made that the appellant may have the benefit thereof in any proceeding that he may be hereafter advised to take.

The motion to dismiss the appeal must be denied, because the right of appeal is not dependent upon the appearance of a regular bill of exceptions in the transcript of the record, however ineffectual it may prove on the hearing because of such omission. While there was no order extending the time for filing the bill of exceptions, there was one entered September 26, 1905, extending the time to file the transcript to October 17, 1905, on which day it was filed in this court.

The proper motion in such a case is to affirm, and that having been subsequently filed presents the last question to be considered.

When the cause was returned to the trial court upon the determination of the first appeal, before referred to, a motion for a new trial was made and overruled, and the trial justice proceeded to sentence the appellant to imprisonment in the penitentiary for the same term as before. Conceding that it may have been within his discretion to grant the new trial under the terms of the mandate of this court, he declined to exercise it, and certainly was not compelled to do so. The power to affix the penalty upon conviction is vested exclusively in the trial court and the appellate court is vested with no jurisdiction in respect of the exercise of that power, provided it does not exceed the statutory limit.

As the judgment now appealed from was entered in accordance with the mandate of this court, and the sentence imposed is not in excess of the limit permitted by the statute in case of its violation, we are bound to presume, in the absence of a bill of exceptions, that the proceedings had in the court below were in all respects regular.

It is proper to remark, in view of the attack made upon the trial court in the appellant's written argument filed in opposition to the motion to affirm, that there is nothing in the unsigned bill of exceptions which he tendered below and had incorporated in the transcript, going to show that he was denied any right on the last hearing, on which error could be reasonably assigned. All of the questions therein presented relating to the sufficiency of the indictment and the proceedings on the former trial, had been determined adversely to the appellant on the former appeal. As before said,

we have nothing to do with the alleged severity of the sentence.

For the reasons given, the motion is well taken and the judgment must be affirmed. It is so ordered.

**Affirmed.**

**ELMORE EMBREW BERNSDORFF, APPELLANT,**

**v.**

**LUCY EVA BERNSDORFF.**

**HUSBAND AND WIFE; MAINTENANCE.**

A decree of the court below ordering the payment by a husband of a monthly sum for the maintenance of his wife and child affirmed; but a motion for the allowance of additional counsel fees because the costs were increased by the taking of unnecessary and irrelevant testimony.

No. 1578. Decided January 4, 1906.

**APPEAL** by defendant from an order of the Supreme Court of the District of Columbia, in Equity, No. 24,487, directing the payment of alimony. **Affirmed.**

*Mr. C. F. Carusi* for the appellant.

*Mr. C. W. Stetson* for the appellee.

Mr. Chief Justice **SHEPARD** delivered the opinion of the Court:

This is an appeal from a decree, on a bill filed by a wife against her husband, ordering the defendant to pay her the sum of \$25 per month for the maintenance of herself and infant child.

The bill, while containing some allegations more appropriate in one for legal separation from bed and board under section 966 of the Code, is substantially for maintenance as provided in section 980.

It appears from the evidence that the parties were married in the city of Washington, January 6, 1902, and have an infant child about two years old whose custody has been awarded to the wife.

The parties first lived in a house with the mother of the appellant, and afterwards rented a house by the month, of which the appellee's mother afterwards became an inmate, living as a member of the family. Husband and wife lived together in harmony for some time, but the husband, who is a deaf mute, finally became dissatisfied with his mother-in-law and objected to her living with them.

He was employed in the mail bag repair shop of the Post-office Department with a salary of \$55 per month, and was engaged in some extra labor which paid about \$15 per month. The wife, prior to the marriage, had been employed as a nurse in one of the hospitals of the city; after marriage she had been maintained by her husband.

The husband talked with the wife about obtaining a home elsewhere, but the latter desired her mother's continued residence with them. This disagreement made their relations unpleasant. The husband, about August 5, 1904, went away for a few days' rest to a place where his mother was then living in Virginia, a few miles from Washington. He left no money for the payment of the rent of the premises occupied, but gave his wife, during the month, about \$14 for expenses. He demanded that she remove with him

to his mother's residence, which she declined. An attempt has been made to show that he procured several rooms in a flat or apartment house in Washington, suitable in every way as a residence, and insisted on his wife taking up her residence with him therein, leaving her mother behind. The most that appears in his answer to the bill and in his evidence is that he offered to rent such rooms only, and did not designate the particular place. All that he actually did was to insist upon her removal with him to his mother's Virginia residence. The evidence shows that the mother had no house, but was employed by the owner of a farm in Virginia who lived elsewhere. She received wages and her board, and occupied the farmhouse. She had no lease of the house, and apparently no contract for a definite period of service. It appears that there was ample room in the house for appellant, appellee, and their child, and that the owner was willing that they might occupy it also while his mother remained.

The wife declined to remove to the new home and the husband remained away. Some negotiations were had looking to a settlement of differences which were terminated by the rather hasty action of the wife, who retained new counsel—not, however, her representative on this appeal—without notice to the one first retained, and immediately filed the bill.

Considering the disabilities of the appellant, the case is a hard one, but we can not say that the appellee was not entitled to a decree for the maintenance of herself and child.

Had the husband actually secured the rooms in the city of which he spoke and invited his wife to remove thereto with the child, and without her mother, he would have been within his undoubted right as head and support of the family, and his removal thereto would not have constituted desertion, or refusal of maintenance. This, as we have seen, he failed to do. We can not regard the offer of the Virginia home as sufficient. Aside from the fact that she would have the like right to object to his mother becoming a member of the family, it was not a home in the proper sense of the word.

The occupation of the house by the appellant's mother was at the will of the owner, and the joint occupation to which she had invited her son and his family, was at her will and pleasure.

No objection has been raised to the amount of the maintenance decreed, or to the allowance for the appellee's attorneys fees and other costs. The amount and the continuation of the allowance will remain subject to the control of the equity court. Should the parties reconcile their differences and resume their relations, the order for maintenance will necessarily be discharged. And if the husband shall, hereafter, in good faith procure a suitable home and invite his wife to take up her residence therein, her declination will afford ample ground for discharging him from further charge of maintenance.

As the costs of this appeal will have to be paid by the appellant, and the same have been increased by the taking of a considerable amount of irrelevant and unnecessary testimony before the examiner, we decline to grant the appellee's motion for an allowance for attorneys fees in addition to that made in the decree below.

The decree will be affirmed with costs. It is so ordered.

Affirmed.

CHARLES P. POSEY, APPELLANT,

v.

THE UNITED STATES, APPELLEE.

CRIMINAL LAW; ARSON; INDICTMENT, SUFFICIENCY OF; JOINDER OF COUNTS; PRACTICE.

1. A count under sec. 820, Code D. C., charging an attempt to burn a house, the property of another person, and a count under section 821, charging the defendant with setting fire to and burning certain goods belonging to him with intent to defraud an insurance company, may properly be joined in one indictment, notwithstanding the penalties imposed by the two sections are not the same.
2. An indictment charging the defendant with an attempt to burn a certain building occupied and used by him in part as a store and in part as a dwelling, which building was the property of another named person, states an offense under sec. 820, Code D. C. The fact that defendant was occupying the building as a tenant does not take it out of the terms of the statute.
3. In a criminal case, a general verdict and judgment on an indictment containing several counts will not be reversed on error if any one of the counts is good and warrants the judgment.
4. Held, therefore, that there being an express finding of guilty under the first count, and that count being sufficient to support the judgment and sentence, the question of the sufficiency of the other counts would not be considered.

No. 1585. Decided December 5, 1905.

APPEAL by defendant from a judgment and sentence of the Supreme Court of the District of Columbia, holding a Criminal Court, entered upon a verdict finding him guilty of arson. Affirmed.

Mr. M. F. Mangan and Mr. John C. Gittings for the appellant.

Mr. J. S. Easby-Smith for the United States.

Mr. Justice DUELL delivered the opinion of the Court:

The appellant was indicted under sections 820 and 821 of the District Code. The indictment contained three counts; the first, drawn under section 820, charged him with attempting to burn a certain house, the property of another person; the second and third counts were drawn under section 821, and respectively charged him with setting fire to certain goods belonging to him with intent to defraud the Potomac Insurance Company, and with burning certain goods belonging to him with intent to defraud the same company. He pleaded not guilty, and on trial was found guilty on the first and second counts and not guilty on the third. Motions in arrest of judgment and for a new trial were made and overruled, and he was thereafter sentenced to imprisonment in the penitentiary for a year and a day, and from such sentence this appeal was taken.

The record discloses that the appellant, on July 22, 1902, was occupying, as a residence and store, a house located in the District, and owned by Mrs. Annie C. Felter, which he rented, paying her \$22 a month. The indictment is predicated upon the attempt to burn this building, and the goods, wares, and merchandise therein contained, and the proofs show that there was but one attempt to burn, and that that occurred on the night of the 22d

of July, 1902. The first ground on which the motion in arrest of judgment is based is upon the contention that the first and second counts were improperly joined in the indictment. It is proper at this point to dispose of that question, which forms a part of the assignment of errors. Both charges were for the same act which was committed by the same person, at the same time. We are clearly of the opinion that the counts were properly joined, and that had separate indictments been returned, the court could have properly consolidated them. The gravamen of both offenses is burning or attempting to burn. Such acts in the District of Columbia are statutory offenses, and may be set out as separate counts in the same indictment. It is difficult to state a case where two offenses grow out of the same transaction, if the present case does not disclose one. The mere fact that the penalties are not the same is not controlling. The penalty provided by section 820 is imprisonment for not less than one year, nor more than ten years, while under section 821, the penalty is imprisonment for not more than fifteen years. *Corralo v. United States*, 24 App. D. C., 229: 32 Wash. Law Rep., 711.

Turning now to the first count, which is as follows:

"The grand jurors of the United States of America, in and for the District of Columbia, aforesaid, upon their oath do present:

"That on the twenty-second day of July, in the year of our Lord one thousand nine hundred and two, and at the District aforesaid, one Charles P. Posey, late of the District aforesaid, did maliciously attempt to burn a certain building there situate, occupied and used in part by the said Charles P. Posey as a store, and in part as a dwelling, and which said building was then and there the property of a certain Anna Caroline Felter, against the form of the statute in such case made and provided, and against the peace and Government of the said United States."

We think that there can be no doubt of its sufficiency, and that it states an offense under section 820, which reads as follows:

"Sec. 820. Arson.—Whoever shall maliciously burn or attempt to burn any dwelling, or house, barn, or stable adjoining thereto, or any store, barn, or outhouse, or any shop, office, stable, store, warehouse, or any other building, or any steamboat, vessel, canal boat, or other water craft, or any railroad car, the property, in whole or in part, of another person, or any church, meeting house, schoolhouse, or any of the public buildings in the District, belonging to the United States or to the District of Columbia, shall suffer imprisonment for not less than one year nor more than ten years."

The proofs showed conclusively that the building was the property of Mrs. Felter, and that brings it within the terms of the section of the Code in that it was property "in whole or in part of another person." The fact that the appellant was occupying the building as a tenant does not take it out of the terms of the section. It is not to be presumed that Congress intended to exempt from liability a tenant who should maliciously burn or attempt to burn a building belonging to another though temporarily occupied by him. In making such burn-

ing or attempting to burn a statutory offense, there was no reason why any such exception should be made, and therefore none will be inferred. The facts disclosed as to the circumstances surrounding the attempt to burn the building were sufficient to show that the offenses came within the terms of the statute. There was no error in the refusal of the court to instruct the jury to render a verdict of acquittal on the first count of the indictment. To hold otherwise would result in robbing the section of much of its vitality and would improperly limit it.

As we find this count and the verdict rendered upon it clearly warranted, it follows that it is sufficient to support the judgment and sentence. There was an express finding of guilty on the first count and the sentence of one year and a day was not greater than provided by section 820, under which the count was framed.

In view of this conclusion we deem it unnecessary to expressly determine the sufficiency of the second count. In *Oloassen v. United States*, 142 U. S., 140, the court, considering this very question, and after finding that one of several counts of one indictment was sufficient, said that it was unnecessary to consider the remaining counts, because the verdict of guilty on that count was sufficient to support the judgment and sentence. The reason for such finding applies equally here. The court said, at page 148: "In criminal cases the general rule, as stated by Lord Mansfield before the Declaration of Independence, is 'that if there is any one count to support the verdict it shall stand good, notwithstanding all the rest are bad.'" After citing authorities the court adds: "And it is settled law in this country, and in this country generally, that in any criminal case a general verdict and judgment on an indictment or information containing several counts can not be reversed on error, if any one of the counts is good and warrants the judgment, because, in the absence of anything in the record to show the contrary, the presumption of law is that the court awarded sentence on the good count only." In conclusion it may be added that the exclusion of the questions put to the defendant by his counsel as to whether he had ever before been arrested, or ever been convicted of any crime, even though it might have been proper for the court to allow them to be answered, is not a reversible error. The defendant derived as much advantage from the questions being asked by his counsel as he would had he answered them.

We conclude that the judgment should be affirmed; and it is so ordered.

Affirmed.

**Actions.**—An insurance company, subrogated to rights of insured against the party whose negligence caused the loss, is held, in *Cunningham & Hinshaw v. Seaboard Air Line R. Co.* (N. C.), 2 L. R. A. (N. S.), 921, to be the real party in interest, by whom the action against the wrongdoer must be brought.

A right of action for negligence in giving a lot owner an erroneous level for street grade is held, in *Moore v. Lancaster* (Pa.), 2 L. R. A. (N. S.), 819, not to run with the land.



# Court of Appeals of the District of Columbia.

BERTON O. WETMORE, ADMINISTRATOR,  
ETC., TO THE USE OF JOHN F.  
MCKAY, APPELLANT,

v.

JAMES L. KARRICK.

No. 1801.

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 46,600, entered upon demurrer to defendant's plea, plaintiff electing to stand upon his demurrer. Affirmed.

*Mr. Wm. L. Ford* for the appellant.

*Mr. J. J. Darlington* for the appellee.

PER CURIAM:

A former appeal was granted in this case from an order sustaining a demurrer to the defendant's special plea, and that order was reversed and the cause remanded for further proceedings not inconsistent with the opinion then delivered. 32 Wash. Law Rep., 435; S. C., 25 App. D. C., 415.

Upon such further proceeding the plaintiff elected to stand upon his said demurrer, and final judgment was thereupon rendered for the defendant. From that judgment the plaintiff has prosecuted this appeal. Having been rendered in accordance with the mandate and opinion of this court, the judgment will be affirmed with costs; and it is so ordered.

Affirmed.

GEORGE B. CORTELYOU, POSTMASTER-  
GENERAL, APPELLANT,

v.

BATES & GUILD CO., APPELLEE.

No. 1803. Decided March 2, 1906.

APPEAL by defendant from so much of a decree of the Supreme Court of the District of Columbia, in Equity, No. 23,722, as denied a reference to ascertain damages from the suing out of an injunction. Reversed.

*Mr. Henry H. Glassie* for the appellant.

*Mr. Wm. S. Hall* and *Mr. Holmes Conrad* for the appellee.

*Mr. Justice DUELL* delivered the opinion of the Court:

This case was heard with the case of this appellant against Henry O. Houghton et al., 34 Wash. Law Rep., 190. The question at issue is the same, and for the same reasons as those stated in our opinion in that case, so much of the decree herein as was appealed from must be reversed, with costs. The damages, if any, in this case are stipulated at \$2,349.83.

The court below is directed to enter a decree against the complainant, and the surety upon the injunction bond, for the sum of \$2,349.83, with interest from July 7, 1905.

Reversed.

**Death.**—The right to recover on circumstantial evidence for the death of a switchman killed at a switch, on the theory that his foot was caught between the rails because of defective blocking, is denied in *Neal v. Chicago, R. I. & P. R. Co.* (Iowa), 2 L. R. A. (N. S.), 905, where the circumstances shown were equally consistent with the theory that he slipped on icy ground and fell in front of the car, or that he attempted to board the moving train and fell under it.

Diligent inquiry is held in *Modern Woodmen of America v. Gedom* (Kan.), 2 L. R. A. (N. S.), 809, to be necessary to raise a presumption of death from seven years' unexplained absence of a person.

**Bills and Notes.**—The right of a bona fide holder of a promissory note to fill in a blank left for an amount with the sum stated in the margin is sustained in *Chestnut v. Chestnut* (Va.), 2 L. R. A. (N. S.), 879, unless the blank was left by mistake.

That a note secured by mortgage is overdue is held, in *Gardner v. Bacon Trust Co.* (Mass.), 2 L. R. A. (N. S.), 787, not to prevent one holding it under an apparently valid transfer from the true owner from conferring a good title upon an innocent purchaser for value, although he secured the transfer by fraud.

**Electricity.**—A corporation engaged in the generation of electricity is held, in *Ryan v. St. Louis Transit Co.* (Mo.), 2 L. R. A. (N. S.), 777, to be bound, upon contracting with a stranger for the performance of work within its buildings, to keep its wires so protected and insulated as to be safe for the latter's workmen.

**Contracts.**—A person for whose benefit a contract is made between other parties is held, in *Smith v. Pfleger* (Wis.), 2 L. R. A. (N. S.), 783, to have the right to enforce it, regardless of his relations to the parties, of his knowledge of the transaction at the time of its occurrence, and of his formal assent prior to the commencement of action.

**Election.**—The death of a widow within the time allowed her by a statute to elect whether to take her dower or a legacy is held, in *Flynn v. McDermott* (N. Y.), 2 L. R. A. (N. S.), 959, to vest a right to the legacy in her executor.

A statute requiring vaccination as a prerequisite to attendance at public schools is held, in *Viemeister v. White* (N. Y.), 70 L. R. A., 796, to be a reasonable and proper exercise of the police power.

A statute making it a misdemeanor to give Christian Science treatment for a fee is held, in *State v. Marble* (Ohio), 70 L. R. A., 835, not to be an interference with the rights of conscience and of worship.

**Arrest.**—Avoidance of an officer by flight, to prevent an illegal arrest, is held, in *Porter v. State* (Ga.), 2 L. R. A. (N. S.), 730, not to be such an endeavor to escape as to justify an arrest without a warrant.

#### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

### Legal Notices.

#### FIRST INSERTION.

**Louis A. Dent, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of Edward D. Perkins, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 6th day of September, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 6th day of September, 1906. EDWARD GREEN, 10th st. and Va. ave. S. W.; E. MADISON HALL, 10th st. wharves S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,898. Administration. [Seal.] 36-3t

**John E. Taylor and Douglass & Douglass, Solicitors**  
In the Supreme Court of the District of Columbia.

**Mary A. Knopp et al., Complainants, v. Unknown Heirs of Francis Deakins et al., Defendants.**

No. 26,470. Equity Doc. 68.

The object of this suit is to quiet title by adverse possession in the complainants to the following described property, situate in the District of Columbia, to wit: Lot 188 in square numbered 1273, formerly square 103, in Beatty and Hawkins' Addition to Georgetown; beginning on 83d street at a point forty feet north from the northwest corner of 38d and Q streets and running thence on said 83d street north 26 feet, 8 inches; thence west to the rear line of said lot; thence south 13 feet, 4 inches; thence southeast and east in accordance with the original record line of said lot to the beginning. On motion of the complainants, it is, this 6th day of September, 1906, ordered that the defendants, the unknown heirs, devisees, and alienees of Francis Deakins, and the unknown heirs, devisees, and alienees of the survivor of Stephen B. Balch, Thomas Corcoran, George Thompson, William Whann, John Crookshanks, James Calder, Christian Kurtz, John Peter, David English, Henry Knowles, members of the Committee of the Presbyterian Congregation in Georgetown, their unknown heirs, devisees, or alienees; the unknown heirs, alienees, or devisees of Fleury Lewis, and the unknown persons claiming by, through, or under them, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of one month from this date; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Times before said day. ASHLEY M. GOULD, Justice.

A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 36-3t

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### Legal Notices.

**Wm. A. McKenney, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Lawrence F. Graham, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of September, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of September, 1906. AMERICAN SECURITY & TRUST CO., by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,558. Admn. [Seal.] 36-3t

**T. Percy Myers, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers who were by the Supreme Court of the District of Columbia granted letters of administration on the estate of James Dowd, deceased, have with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 24th day of September, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 5th day of September, 1906. T. PERCY MYERS, JOHN J. BROSNAN, by T. Percy Myers, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,069. Administration. [Seal.] 36-3t

**Chas. F. Diggs, Solicitor**  
In the Supreme Court of the District of Columbia,  
Holding an Equity Court.  
**Henry W. Thurston v. Francis B. Clark, Charles B. McLellan, Henry F. Woodard, and Mable Grace McKay, executors of the estate of Nathaniel McKay, deceased.** Equity, No. 25,788.

The object of this suit is to have declared null and void an assignment by Henry W. Thurston to Francis B. Clark, of a debt of \$41,311.66, due by the estate of Nathaniel McKay, deceased, to the said Thurston, and also to have the reassignment of the said debt by the said Clark to the defendant, Charles B. McLellan, declared null and void; and for an accounting by the said Clark for money received by him on account of the said debt, from the executors of the estate of the said Nathaniel McKay, deceased; and for a decree declaring the said debt to be the property of the said Thurston, and for an order directing the said executors to pay over to the said Thurston the amount of money now in their hands, which may be due on account of the said debt, as per a compromise agreement, authorized by this court. On motion of the complainant, it is, this 6th day of September, A. D. 1906, ordered that Francis B. Clark and Charles B. McLellan, two of the defendants in the above entitled cause, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter, Evening Star, and Washington Post. By the [Seal] Court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 36-3t

**Delmas C. Stutler, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Martin Gasteley, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of September, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of September, 1906. DELMAS C. STUTLER, 458 La. ave., N.W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,891. Administration. [Seal.] 36-3t

**Legal Notices.****Charles W. Darr, Attorney**

In Justice's Court of the District of Columbia,  
Subdistrict No. 3.  
Stephen Th. Westdal, Plaintiff, v. Emory B. Buz-  
hardt, Defendant.  
No. 8975.

The object of this suit is to recover two hundred and sixty-eight dollars and twenty-four cents, with interest and costs of suit, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 31st day of August, 1906, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. THOS. H. CAL-  
LAN, Justice of the Peace, 627 F st. N. W. [Seal.] 86-8t

**Thos. C. Bradley, Solicitor**

In the Supreme Court of the District of Columbia,  
Holding an Equity Court.  
Lena A. Walker, Complainant, v. Stanley D. Walker  
and Mary Gonzales, Defendants.  
No. 25,855. Equity.

The object of this suit is to obtain a divorce a vinculo matrimonii from the defendant, Stanley D. Walker. On motion of the complainant it is, this 2d day of July, A. D. 1906, ordered that the defendants, Stanley D. Walker and Mary Gonzales, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law  
[Seal] Reporter and The Washington Post. WEN-  
DELL P. STAFFORD, Associate Justice. True  
copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst.  
Clerk. 86-8t

**Phillip H. Walker, Solicitor**

In the Supreme Court of the District of Columbia.  
The Title Guaranty and Surety Company v. Leslie M.  
Shaw et al. No. 28,478. Equity Doc. 58.

The object of this suit is to enjoin the defendant Shaw, as Secretary of the Treasury, from paying, and the defendants Gathwait and Zibell from receiving, a fund in the Treasury of the United States to the credit of a contract between Gathwait and the United States for the construction of a post-office building at Anderson, Indiana, the appointment of a receiver of said fund, and its distribution among the unpaid creditors of Gathwait, who furnished labor and material for the prosecution of the said contract. On motion of the complainant, it is, this 5th day of September, 1906, ordered that the defendants, Fred M. Gathwait and William F. Zibell, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive  
[Seal] weeks in The Washington Law Reporter and  
The Washington Post before said day. ASH-  
LEY M. GOULD, Justice. True copy. Test: J. R. Young,  
Clerk, by J. W. Latimer, Asst. Clerk. 86-8t

**John Raum, Solicitor**

In the Supreme Court of the District of Columbia.  
Ruth I. McNaney, infant, by John J. McNaney, her  
next friend, v. Mary M. Babson et al.  
In Equity, No. 28,385.

The trustees herein having reported a written offer to purchase for the sum of \$4,000 in cash, the property described in this proceeding, to wit: Lots ten (10), eleven (11), and twelve (12) in square 948, in the city of Washington, in the District of Columbia, it is, this 31st day of August, A. D. 1906, ordered that said trustees be, and they are hereby, authorized to accept said offer, and upon compliance with the terms of sale by the purchaser, the said sale shall stand ratified and confirmed, unless cause to the contrary be shown on or before the 1st day of October, 1906. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said  
[Seal] last mentioned date. WENDELL P. STAF-  
FORD, Justice. A true copy. Test: J. R.  
Young, Clerk, by F. W. Smith, Asst. Clerk. 86-8t

**Legal Notices.****Joseph H. Stewart, Attorney**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Caleb I. Taylor, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of August, 1906. ANNIE DANIEL, by Joseph H. Stewart, her attorney, 211 C st. S. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,833. Administration. [Seal.] 86-8t

**Wilson & Barksdale, Attorneys**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Harriet Seton Harris, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 31st day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of August, 1906. FANNIE C. WILLIS, 1448 Q. st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,533. Administration. [Seal.] 86-8t

**Joseph H. Stewart, Attorney**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Louisa M. Lampton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of August, 1906. EDWARD W. LAMPTON, 1541 14th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,533. Administration. [Seal.] 86-8t

**Delmas C. Stutler, Attorney**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Margaret A. Vandersee, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of September, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of September, 1906. WILLIAM E. AMBROSE, 458 Louisiana ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,806. Administration. [Seal.] 86-8t

**Hayden Johnson, Attorney**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John Lippincott, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of August, 1906. WM. W. BOARMAN, Columbian Bldg. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,323. Admn. [Seal.] 86-8t

**Legal Notices.****SECOND INSERTION.**

**Wm. A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Alexander M. Bell, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 24th day of September, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in, person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 7th day of August, 1906. **AMERICAN SECURITY AND TRUST COMPANY**, by James F. Hood, Secretary, by Wm. A. McKenney, Attorney. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,130. Administration. [Seal.] 35-3t

**Erskine Gordon, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of John A. Bryan, Deceased.**  
**No. 13,864. Administration Docket —.**

Application having been made herein for letters of administration on said estate, by Washington Safe Deposit Company, Incorporated, it is ordered this 28th day of August, A. D. 1906, that Samuel M. Bryan, and all others concerned, appear in said court on Monday, the 1st day of October, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WEN- [Seal] DELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 35-3t

**Wolf & Cohen, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Jacob J. Appich, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of August, 1906. **CAROLINE APPICH**, care of Wolf & Cohen. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,887. Administration. [Seal.] 35-3t

**Wolf & Cohen, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Patrick H. Riley, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of August, 1906. **SIMON WOLF**, care of Wolf & Cohen, Attorneys, 14th and G sts. N.W. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,811. Admn. [Seal.] 35-3t

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W.

**Legal Notices.**

**George H. Lamar, Solicitor.**

In the Supreme Court of the District of Columbia. **Edwin E. Overholt v. William B. Matthews, Dudley A. Tyng, C. Pruyn Stringfield, and The Overholt Railway Signal Company, a Corporation under the laws of the State of West Virginia.**

In Equity. No. 23,234. Doc. 58.

On motion of the plaintiff, by George H. Lamar, his attorney, it is, this 28th day of August, 1906, ordered that the defendants, **Dudley A. Tyng and C. Pruyn Stringfield**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter, The Washington Times, and The Washington Post; otherwise the cause will be proceeded with as in case of default. The object of this suit is to secure against defendants, **Matthews, Tyng, and Stringfield**, an accounting and discovery in respect to a certain invention, and the stock of defendant corporation, and the proceeds arising from the disposition of a part thereof, the production and surrender of all books and papers of defendant corporation, an injunction restraining the sale or the transfer of certain stock of defendant corporation, and an order requiring the surrender and transfer thereof to complainant upon terms of equity, and for general relief. By the Court: [Seal] **WENDELL STAFFORD, Justice.** True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 35-3t

**A. H. Bell, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Caroline Loochboehler**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of August, 1906. **NICHOLAS LOUCHBOEHLER**, Conduitt Road, D. C. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,734. Administration. [Seal.] 35-3t

**Samuel Maddox, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Mary Maguire v. Mary T. Diggins et al.**

No. 24,565. Equity.

**Samuel Maddox, Francis H. Stephens, and Leon Tobriner**, trustees, having reported the sale to Catherine Quigley of the east twenty-one and sixty-seven hundredths (21.67) feet front of lot four (4) in square four hundred and seventy in the city of Washington, District of Columbia for the sum of eleven hundred and fifty dollars (\$1,150.00), it is, this 28th day of August, A. D. 1906, ordered that said sale be and it is finally ratified and confirmed unless cause to the contrary be shown on or before the 28th day of September, A. D. 1906. Provided a copy of this order be published once a week for three successive weeks before said last-mentioned date in The Washington Law Reporter. By the Court: WEN- [Seal] DELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 35-3t

**Wm. A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Philo J. Lockwood**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 24th day of September, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in, person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 27th day of August, 1906. **AMERICAN SECURITY AND TRUST COMPANY**, by James F. Hood, Secretary, by Wm. A. McKenney, Attorney. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,108. Admn. [Seal.] 35-3t

**Legal Notices.**

**Victor H. Wallace, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Cyrus Snyder, Deceased.**  
 No. 13,850. Administration Docket.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Julia N. Snyder, the wife of the decedent, and the executrix named in said last will and testament, it is ordered, this 29th day of August, A. D. 1906, that Charles C. Snyder, and all others concerned, appear in said court on Monday, the 8th day of October, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WEN-

[Seal] **DELL P. STAFFORD, Justice.** Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 35-3t

**Lewis F. Lindal, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William W. Stone, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of August, 1906. C. E. KING, 1803 14th st. N. W. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,836. Administration. [Seal.] 35-3t

**Samuel Maddox, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Hugh J. Kress, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 14th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of August, 1906. GEO. E. BARBER, 426 11th st. S. W. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,886. Administration. [Seal.] 35-3t

**Ralston & Siddons, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Ferdinand Weiler, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 27th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of August, 1906. FERDINANDA A. WEILER, 2020 15th st. N. W. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,879. Administration. [Seal.] 35-3t

**John E. Laakey and Harvey Given, Solicitors**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**

**Robert A. Myers, Complainant, vs. Willard H. Myers et al., Defendants.** Equity. No. 26,311.

The object of this suit is to procure a divorce from the defendant, Willard H. Myers, on the ground of adultery. On motion of the complainant, it is, this 27th day of August, A. D. 1906, ordered that the defendant, Willard H. Myers, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default.

[Seal] **WENDELL P. STAFFORD, Justice.** True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 35-3t

**Legal Notices.****THIRD INSERTION.**

**Walter C. Clephane, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Henry A. Vieth v. City and Suburban Railway Co. et al.**  
 No. 23,249. Equity Doc. 58.

The object of this suit is to compel a conveyance to the complainant of the real estate hereinafter described, and, if necessary, to substitute a trustee or trustees to make such conveyance; also to secure a mandatory injunction requiring the City and Suburban Railway Company to abandon its occupancy of said real estate and to pay complainant for its illegal use thereof. Said real estate is situated in the County of Washington, in the District of Columbia, and is described as follows, to wit: So much of that strip of land designated as Rhode Island avenue as extended by the Commissioners of the District of Columbia and lying between the lines of said avenue if extended so far, being in the center of said avenue and in width sixty-four (64) feet, and as long as the portion of said avenue extended is enclosed within the metes and bounds of the property known as lot six (6) in John B. Kibbey's subdivision of his farm called "Granby," situate on Brentwood road in the county and District aforesaid, according to a plat attached to and recorded with a deed in Liber, J. A. S., No. 84, at folio No. 377, one of the land records of the District of Columbia. On motion of the complainant, it is, this 21st day of August, 1906, ordered that the defendants, Chauncey C. Bestor, Mary M. Potts, Anna B. Doyle, Ellen Berry, and William Kealey Schoepf, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post before said day. WENDELL P. STAFFORD, Justice.

True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 34-3t

**Wilton J. Lambert, Ralston & Siddons, George F. Williams, and Alex. H. Bell, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Laura G. Robinson v. Francis H. Stephens et al.**  
 Equity No. 23,121.

**The Central National Bank v. Walter F. Hewett et al.**  
 Equity No. 24,743.

Upon consideration of the reports of the trustees in the above entitled causes and the petition of Ben Schwartz in Equity No. 24,743, it is, this 6th day of August, A. D. 1906, ordered, adjudged, and decreed that the sale of lots 78, 79, 80, and 81, in Robert C. Hewett's subdivision of lots in square 448, as per plat recorded in Liber 12, folio 25, of the records of the surveyor's office of the District of Columbia, reported by said trustees to Ben Schwartz for eleven thousand three hundred and seventy-five dollars (\$11,375), be finally ratified and confirmed, unless cause to the contrary be shown on or before the 10th day of September, 1906; and provided a copy of this order be published once a week for three successive weeks before said day in The Washington Times, The Washington Law Reporter, and the Washington Post. By the Court: JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 34-3t

**Wm. D. Hoover, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary M. Turner, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of August, 1906. THE NATIONAL SAFE DEPOSIT, SAVINGS, AND TRUST COMPANY, of the District of Columbia, by Wm. D. Hoover, Second Vice-President. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,751. Administration. [Seal.] 34-3t

## Legal Notices.

**Ralston & Siddons, Attorneys**  
 Supreme Court of the District of Columbia,  
 Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Francis H. Smith, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 21st day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of August, 1906. E. QUINCY SMITH, Bond Building. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,876. Administration. [Seal.] 84-St

**Charles W. Darr, Attorney**  
 In Justice's Court of the District of Columbia,  
 Subdistrict No. 3.  
**Dennis W. Magrath, Plaintiff, v. Emory B. Bushardt,**  
 Defendant. No. 8961.

The object of this suit is to recover two hundred and forty-two dollars and fifty cents, with interest and costs of suit, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 21st day of August, 1906, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. THOS. H. CALLAN, Justice of the Peace, 637 F St. N. W. [Seal.] 84-St

**George Francis Williams, Attorney**  
 Supreme Court of the District of Columbia,  
 Holding a Probate Court.  
 This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of Parthenia Jones, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 20th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 20th day of August, 1906. MILES JONES, FLOYD E. DAVIS. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,859. Administration. [Seal.] 84-St

**W. C. Martin, Attorney**  
 Supreme Court of the District of Columbia,  
 Holding a Probate Court.  
 This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Solomon G. Brown, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 9th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of August, 1906. LUCINDA A. BROWN Hilldale, D. C. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,851. Administration. [Seal.] 84-St

**Alex. H. Bell, Attorney**  
 Supreme Court of the District of Columbia,  
 Holding a Probate Court.  
 This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Patrick Crowe, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of August, 1906. JOHN W. CROWE, 704 T St. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,809. Administration. [Seal.] 84-St

## Legal Notices.

**Frank W. Hackett, Attorney**  
 Supreme Court of the District of Columbia,  
 Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Samuel Donelson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of August, 1906. JESSIE LOUISE DONELSON, 1761 Church street. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,849. Administration. [Seal.] 84-St

[Filed August 20, 1906. J. R. Young, Clerk.]  
**M. J. Keane and D. W. O'Donoghue, Solicitors**  
 In the Supreme Court of the District of Columbia,  
 Holding Equity Court.  
**Peter A. Drury et al. v. The Unknown Heirs, Allenees,**  
**and Devises of George Peter, Deceased. Equity,**  
 No. 25,273. Doc. 56.

The object of this suit is to perfect the title of the following-described property located in the city of Washington, District of Columbia, and known on the ground plan or plat of said city as the east one-half of lot twenty-five (25), in square one hundred (100), and more particularly described as follows: Beginning for the same at the northeast corner of said lot and running thence west twenty-five (25) feet, five and one-half (5½) inches; south one hundred (100) feet, nine and one-half (9½) inches; thence east along the rear of lot twenty-five (25) feet, five and one-half (5½) inches; thence north one hundred (100) feet, nine and one-half (9½) inches to the beginning. On motion of the complainants, by their solicitors, Michael J. Keane and Daniel W. O'Donoghue, it is, this 20th day of August, 1906, ordered that the defendants, the unknown heirs, allenees, and devisees of George Peter, deceased, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of the period of publication herein-after described; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and The Washington Post once a week for three successive weeks before said return day. WENDELL P. STAFFORD, Justice. A true copy. Attest: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 84-St

**A. H. Bell, Attorney**  
 Supreme Court of the District of Columbia,  
 Holding a Probate Court.  
 This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John D. J. O'Connor, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of August, 1906. ROBERT LEE MONTAGUE, 617 La. ave. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,867. Administration. [Seal.] 84-St

**Wm. D. Hoover, Attorney**  
 Supreme Court of the District of Columbia,  
 Holding a Probate Court.  
 This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Richard Crowther, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of August, 1906. THE NATIONAL SAFE DEPOSIT, SAVINGS AND TRUST COMPANY, of the District of Columbia, by Wm. D. Hoover, Second Vice-President. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,891. Administration. [Seal.] 84-St

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### Lawfulness of the Boycott.

We report in this issue the decision of Mr. Justice Stafford, of the Supreme Court of the District, in the case of *Bender v. Local Union No. 118, Bakery and Confectionery Workers' International Union*, and others. The complainant sought to enjoin the defendants from interfering with his business, and especially from instituting and maintaining a boycott against him. It appeared he had changed the bakery conducted by him from a union to an open shop, and being unable for this reason to make terms with the bakers' union, thereafter employed only non-union labor. After his failure to respond to a request for a conference he was pronounced by the defendant organizations "unfair to organized labor." The bakers' union caused circulars to be issued and widely distributed calling attention to this fact, and requesting members and friends of labor organizations to withhold their patronage from him while so unfair. One of these circulars contained a partial list of his customers, and a request that sympathizers with organized labor would refrain from dealing with such customers while they continued to deal with complainant. It appeared, also, that an officer of

the bakers' union had called on certain of complainant's customers and made similar statements and endeavored to persuade them to withdraw their patronage from him. As a result of these acts complainant's business was seriously affected.

The case was one of first impression in the District, and Mr. Justice Stafford, in an interesting opinion, holds with the authorities which declare such conduct on the part of labor organizations within the limits of fair competition, and therefore not unlawful. He therefore denied the application for an injunction pendente lite.

MR. J. WILMER LATIMER, who for the last twelve years has been connected with the office of the clerk of the Supreme Court of the District, has tendered his resignation, to take effect September 30, 1906. For several years Mr. Latimer has been assigned to duty as clerk of Equity Court No. 2, and his efficiency and unflinching courtesy have won for him the cordial friendship and esteem of the members of the bar. He is a native of West Virginia, coming to this District in 1894 to enter Columbian University (now George Washington) Law School, from which he was graduated in 1897. He was admitted to the bar in that year. In 1902 he married a daughter of Mr. Charles H. Oragin, of the District bar.

Mr. Latimer resigns to enter upon the active practice of his profession, and his many friends not only wish but confidently expect for him a successful career.

### Res Ipsa Loquitur.

A good illustration of the limitations of the doctrine of *res ipsa loquitur* is contained in the case of *Strasberger v. Vogel*, 63 Atl., 202. The action was for injuries to a pedestrian who was struck by a brick falling from the chimney of the defendant's house. There was no evidence that the chimney was out of repair, and it was shown that certain persons were on the roof of the house and leaned on the chimney at the time the brick fell. These persons were there without the knowledge of defendant, and did not get on the roof through his premises. In this state of the evidence it was held that the doctrine of *res ipsa loquitur* did not apply, and the facts held not to justify an instruction authorizing a verdict for the plaintiff unless the defendant showed that the falling of the brick was not caused by his negligence.



# Supreme Court of the District of Columbia.

JOHN BENDER, COMPLAINANT,

v.

LOCAL UNION, NO. 118, BAKERY AND CONFECTIONERY WORKERS' INTERNATIONAL UNION ET AL.

LABOR UNIONS; BOYCOTT; INJUNCTION.

Complainant sought to enjoin defendants (a bakers' union, of which his former employees were members, the central body, and officers of both organizations) from interfering with his business and especially from instituting and maintaining a boycott against him. It appeared from the bill and answers to a rule to show cause that complainant had formerly conducted his bakery as a union shop, but in 1905 had changed it to an open shop, and thereafter employed non-union men, being unable to make terms with the union. The bakers' union filed a complaint against him with the central body, whose request that he appear before its grievance committee was ignored, and he was pronounced "unfair to organized labor." Circulars announcing this fact and requesting members and friends of labor organizations to refrain from dealing with him while he remained unfair, were issued and widely distributed; and one of these circulars gave a partial list of complainant's customers and requested all sympathizers with organized labor to refrain from dealing with such customers while they continued to deal with complainant. An officer of the bakers' union went to certain of complainant's customers and made similar statements and endeavored to persuade them to withdraw their patronage from him. Held that these acts of the defendants were not unlawful, and an injunction pendente lite denied.

Equity. No. 26,491. Decided August 31, 1906.

HEARING on a rule to show cause why a temporary restraining order should not be continued pendente lite. Rule discharged.

*Mr. Henry E. Davis* and *Mr. E. B. Kimball* for the complainant.

*Mr. Leon Tobriner* for the defendants.

*Mr. Justice STAFFORD* delivered the opinion of the Court:

The plaintiff is a baker doing business in this city and employing a number of men. The defendants are labor organizations and some of their officers. The case is brought to procure an injunction forbidding the defendants' interfering with the plaintiff's business, and especially forbidding their instituting and maintaining a boycott against him. The plaintiff's bill of complaint is very long and contains a great many charges. Upon the strength of the bill a rule was issued against the defendants to show cause why an injunction should not be issued. In reply to the rule, and also in reply to the bill itself, the defendants have filed their answers denying a large part of the charges. It will not be necessary to analyze the bill and answers in this opinion, but it will be sufficient for present purposes to state the facts as they stand admitted or not denied, because, no evidence having yet been taken, the defendants' word is as good as the plaintiff's, and it is only upon their admissions that an injunction could ordinarily be issued.

The complainant had been engaged in the bakery business in this city for a good many years prior to April, 1905, and for the last three years of that time he had been employing union labor exclusively, and his shop was what is known as a union shop. But in April, 1905, he decided to make a change, and to conduct his

bakery as an open shop, employing any with whom he could agree upon terms regardless of the question whether they were members of the union. The result was that he could not make terms with union men, and since that time he has been obliged to employ non-union men exclusively in order to get his work done on such terms as he was willing to offer. One of the defendants is the Local Union, No. 118, of the Bakery and Confectionery Workers' International Union. This is the union to which the plaintiff's former workmen belonged. Another of the defendants is the Central Labor Union of the District of Columbia. This is a congress of delegates from various labor organizations of the District. The other defendants are officers of one or the other of these organizations. Neither of the organizations is incorporated. They have the constitution, by-laws, and regulations usual in such orders. They aim, among other things, to improve the condition of their members by securing better wages, shorter hours of labor, and other similar advantages by way of bargain with employers. Of course, the theory of such organizations is that a number of workmen by standing together can command better terms of service than any single individual can secure when standing alone. It is of the very essence of the organization that they should act as a unit, and that is the way the defendants appear to have acted in the present case. Finding that the plaintiff would not employ them upon any terms which the union would accept, the bakers' union filed a complaint against him, and he received a request to appear before a grievance committee of the Central Labor Union. He failed to appear, and thereupon the bakers' union pronounced him "unfair to organized labor," and the Central Labor Union indorsed the action. The next step was for the bakers' union to issue circulars stating that the plaintiff had been pronounced "unfair to organized labor" by the union with the indorsement of the Central Labor Union, and to have these circulars widely distributed among the members of labor organizations and the public generally. The circulars contained a request to all members of labor organizations and to all friends of organized labor to refrain from dealing with the plaintiff until he should see the error of his ways and be fair to their organization. One of these circulars also gave a partial list of the plaintiff's customers with their places of business, and requested all sympathizers with organized labor to refrain from purchasing from them so long as they continued to be customers of the plaintiff. One of the officers of the bakers' union went to various customers of the plaintiff and made substantially the same representations that were made in the circulars, and endeavored to persuade such customers to withhold their patronage from the plaintiff. The Central Labor Union and its president and secretary, who are made defendants to this bill, deny any and all connection with the issuing of the circulars and advertisements before mentioned. They say that the Central Labor Union and its officers had nothing to do with the matter except to indorse the finding that the plaintiff was unfair. Consequently, the issuing and distribution of the circulars and the pub-

lishing of the advertisement must be treated as having been made and done by the other defendants alone; that is, the bakers' union, and its officers and members. The plaintiff says, and it is not denied, although it is not expressly admitted, that he has suffered largely in his business by reason of these doings of the defendants. The plaintiff charges that all these things were done by the defendants with the positive intent to injure, and, if necessary, to ruin his business to the end that he might be compelled to submit to the dictation of the union and employ only members of the union upon the union's terms. The answers deny that what they did was done with this intent, but say that the union had the labor of its members to offer for hiring, and that when the plaintiff refused to hire it and refused to answer its request for a conference they were justified in announcing that fact to the labor world; justified in calling upon all members of labor organizations to refrain from patronizing the plaintiff; justified in requesting all friends of labor to withhold their patronage from the customers of the plaintiff. They say it is only a question of reciprocal patronage, and that all union men have a right to combine to bestow their patronage upon those who patronize them, and to call upon their friends and sympathizers to do the same. They disclaim any right and any intention to intimidate or coerce the plaintiff into employing union men whether by threats brought to bear directly upon him or brought to bear upon him indirectly through his customers. They disclaim any right and any intention to intimidate or coerce the plaintiff's customers from dealing with the plaintiff, but assert the right to notify such customers that they must choose between the plaintiff's favor and patronage and the favor and patronage of themselves and their friends. They thus attempt to divide the purchasing public into two opposing camps, one consisting of the members of affiliated labor organizations and all their friends and sympathizers, the other consisting of the plaintiff and all those who prefer his favor and patronage and the favor and patronage of those who do not care to show their sympathy with organized labor by the turn they give to their patronage.

It is evident from the answers themselves that there is here a combination between the defendants to accomplish a certain purpose. What is that purpose? The plaintiff says it is to compel him to employ only union men by injuring his business and by keeping before his eyes the prospect of ruin to his business as the alternative to his complying with the defendants' demands. He says this is the immediate purpose of the combination although it may have a remote and ultimate purpose in the expectation of improving the condition of union men. Consequently, he says the purpose is unlawful. On the other hand, the defendants say that such is not their purpose. They fail, however, to state what the purpose of the combination is. They assert their right to combine to divert patronage from the plaintiff to the friends of organized labor, but they nowhere state what the object and purpose is. What can it be except to demonstrate to the plaintiff that he can not conduct a profitable business

with non-union help, and thereby compel him to employ union help instead? No other rational explanation of the conduct of the defendants can be found.

The plaintiff had an acknowledged right to employ non-union men if he chose. The defendants are attempting to compel him to give up that right and submit to employ only union men. Is that a lawful purpose? The interest which the defendants have in the question is that if only union men can be employed union men can insist on higher wages than they could insist upon if non-union men as well as union men could be employed. They have an interest to keep up the rate of wages. If one manufactures a certain brand of flour it will be for his interest to convince dealers in flour that they can not afford to be without his brand. It might even be for his interest to convince dealers in flour that they could not afford to deal in any other brand. If he could persuade all consumers of flour to buy only his brand he could compel dealers to buy only his brand for sale, however much the dealers might prefer to sell some other brand. Now, if instead of there being one controller of this brand there were several, and they should all combine to compel dealers in flour to buy only their brand, that would be a perfectly lawful purpose, provided they should accomplish it only by lawful means. For instance, they might call upon all who had occasion to purchase flour from the dealers to assist them by declining to purchase any other flour, and, if their appeal proved effectual, the end would be accomplished without transgressing the law. Now, if a union has labor to sell and wishes to compel employers of labor to use no other, why may it not lawfully entertain the purpose of compelling employers of labor to employ only union labor, provided it can accomplish its purpose by lawful means? For instance, why may it not call upon all who have occasion to purchase the products of labor to refuse to purchase the product of any other labor? If it can persuade the purchasing public not to purchase the product of any other labor it will certainly compel employers of labor to employ no other labor however much they may wish to do so. And how does labor in the instance now given differ from flour in the instance given a moment ago? What is there unlawful either in the purpose to be accomplished or in the means taken to accomplish it? The course of competition is full of instances of lawful compulsion. Men are being constantly compelled to do what they do not wish to do, and what they have a perfect right to refuse to do, because they find that they can not otherwise conduct their business to a profit. Now, when John Bender refused to employ the union on its terms, was there anything unlawful in the union calling upon the purchasing public to refuse to purchase the product of any labor except that of the union? The whole effect of the appeal depended on the good will of the public. Was it anything more than calling public opinion to its aid? Up to the point which we have now reached there was no intimidation. There was no threat, unless it be a "threat" to refuse to bestow patronage and to call upon one's friends to do the like by way of assisting the one who makes the appeal. If

the public believed that the cause of organized labor deserved encouragement it would probably respond. It might respond in order to secure the good will and patronage of those who made the appeal. If so, it would only be one of countless instances occurring daily where A patronizes B in the hope that B will patronize A.

But in the case at bar the union went a step further. It undertook to convince the plaintiff's customers that it would be more profitable for them to acquire or retain the patronage of union men and union sympathizers than to deal with the plaintiff. Accordingly, it called upon the public to refrain from dealing with the plaintiff's customers. This, of course, was directed to the accomplishment of the same purpose, namely, to compel the plaintiff to employ only union men; that is, to convince him that his course in employing non-union men would be commercially unprofitable. The purpose was to convince him that union men and union sympathizers were so numerous and so strongly attached to the cause of organized labor that his customers would leave him for those who were in sympathy with the union. What is there here beyond an appeal to the self-interest of the plaintiff and the self-interest of his customers? There is no attempt to coerce either unless it be "coercion" to convince one that his financial interest will not permit him to do what he desires to do. We sometimes hear it said that one in business has a right to have business flow to him without interruption, but that certainly can not be true in its broad and sweeping terms. It can only mean that he has a right to have it flow to him without unlawful interruption, and the question still remains what is unlawful. The principles governing the question may, perhaps, be more easily apprehended by simplifying the situation. Suppose A to be the baker, the manufacturer and employer. Suppose B to be his workman, and suppose him to have but one. Suppose C to be one who desires to be employed by A in place of B. Suppose D to be a customer of A, and suppose that A has only this one customer. Now, suppose that C, wishing to be employed by A in place of B, says to A: "If you will not employ me in place of B, I will buy none of your goods." Is there anything unlawful about that? If C is a labor union consisting of twenty men is the principle different? Suppose further that C says to D: "If you continue to trade with A, I shall withdraw my patronage from you." And suppose C does this knowing that D is A's only customer, and that the result will be financial ruin to A, and that the purpose of C is thereby to bring A to terms, and compel him to employ C instead of B, has he not a right to do this? Are not just such transactions every day occurrences, and is there ever any question about their legality? In all such cases the party upon whom the pressure is brought to bear weighs the commercial advantage of the different courses of action, and decides according to his own interest. Such is the whole course of trade. Now, does it make any difference in principle that B, C, and D instead of being single individuals each represents a hundred individuals? The purpose to be accomplished not being in itself unlawful, the means used not being unlawful when employed

by one person alone, does the transaction become unlawful by reason of the bare fact that instead of one person acting alone two or more persons are acting in concert? It is said that there is a power in numbers which does not exist in the individual, and that consequently the same thing may be unlawful when done by a combination which would be lawful when done by an individual, and that consequently it is the combination itself which constitutes the unlawful element. But is this quite correct? It is easy to see that a great number of persons acting together may give an appearance of force and power which would have the effect to intimidate when one person acting alone would not be able to intimidate. But in that case there is intimidation by force of numbers, and wherever there is intimidation the law is overstepped. But does it make any difference, where the purpose to be accomplished is legal and the means employed are legal, that many persons, instead of one, are seeking to accomplish the legal act by the legal means? In the case supposed a few moments ago, where A, the manufacturer, had only one customer, D, one employee, B, and there was only one person who desired to be employed, C, the whole purpose would be accomplished by the action of individuals. C would convince D that it was for his interest to withdraw his patronage from A; A would be convinced that he could not do business at a profit without retaining D as his customer, and that in order to retain D as his customer it would be necessary for him to discharge B and employ C. The effect would be as complete as if there had been a great number acting together, instead of C and D acting alone, each by himself. It may be true that in the case at bar the defendants expected to accomplish their purpose of unionizing the plaintiff's shop by making manifest to him that he must unionize it in order to make it a financial success. That was the means by which they expected to accomplish their purpose, but they had a legitimate personal motive for their action in the desire to secure employment for themselves and their fellow members with whom they were making common cause. It can not be said that only those individual members of the union who might hope to be employed by the plaintiff had a proper motive in what was done. The union as a whole made contracts for its members and settled the terms of employment with employers, and each one of the members of the union had an interest in the terms upon which the plaintiff should employ members of the union. They were all acting together for their common interest.

The court is aware that the decisions upon questions of this character are not harmonious. Some cases appear to hold that even such conduct as that of the defendants in this case is unlawful and calls for an injunction; that men may not combine even to peaceably persuade the public not to deal with one who refuses to employ them. There are still more cases which hold that men have no right to combine to peaceably persuade the public not to deal with the customers of one who refuses to employ them. But this court has been unable to find in the reasoning of these cases any answer to the questions it has propounded during the

course of this opinion. Other cases hold that such conduct as we have been considering is within the limits of fair competition, and these are believed to be more consistent with the principles of liberty which are at stake. For, after all, it is a question of individual liberty. It is such a principle that the plaintiff invokes, and it is upon such a principle that the defendants rely for their defense. The plaintiff has a right to conduct his business in his own way without coercion, without intimidation, exactly as he shall conclude it is for his own interest to act. The defendants jointly and severally are entitled to the same privilege. They have a right to sell their labor to whom they will and to withhold it from whom they will. They have a right to patronize whom they will and to withhold their patronage from whom they will. It seems to the court that they have a right to call on their friends and sympathizers to withhold their patronage from one who refuses to employ them, their friends and sympathizers being left free to answer the appeal as they believe their own interests to dictate. So long as all parties concerned are left free to follow their own choice as they decide their self-interest dictates, it seems to the court that there has been no infringement upon the personal liberty of any one. Apparently, the question here to be decided has not been passed upon in any reported case in this jurisdiction, and the authorities elsewhere being in conflict this court has felt at liberty to adopt the view which seems to it fundamentally correct. Entertaining these views, it will be necessary to refuse the temporary injunction upon the case made by the pleadings. Other charges made in the bill, if sustained by evidence, may entitle the plaintiff to relief upon the final hearing. No citation of authorities has been made in the course of this opinion, but it is believed that most of those bearing upon the question have been considered. They will be found collected and reviewed in Pomeroy's Equity Jurisprudence, vol. 6, ch. 28, and in a note on boycotting to be found in the American State Reports, vol. 103, beginning at page 488.

Accordingly the rule will be discharged.

A lessee of a building is held, in *Taylor v. Finnigan* (Mass.), 2 L. R. A. (N. S.), 973, not to be constructively evicted by the revocation of his license to conduct the premises as a place of public amusement because of inability to comply with requirements of public officials as to additional exits.

A judgment in favor of a municipal corporation in an action against it and a telephone company for injuries caused by a broken wire maintained by the city on the company's poles, as to which the company was not negligent, is held, in *Hayes v. Chicago Teleph. Co.* (Ill.), 2 L. R. A. (N. S.) 764, to prevent a recovery against the company.

The liability of a municipal corporation for the death of an employee from injuries inflicted in the performance of an ultra vires act is denied in *Switzer v. Harrisonburg* (Va.), 2 L. R. A. (N. S.), 910.

## Supreme Court of the United States.

ALLAN L. McDERMOTT, RECEIVER OF  
THE CITY & SUBURBAN RAILWAY OF  
WASHINGTON, PLAINTIFF IN ERROR,

v.

CHARLES E. SEVERE, BY HIS NEXT  
FRIEND.

STREET RAILWAYS; NEGLIGENCE; PRACTICE; GENERAL EXCEPTION; DAMAGES; MENTAL SUFFERING.

1. Whether a street railway motorman was negligent in failing to get his car under such control, after seeing several young boys on the track at a public crossing where children were in the habit of playing, as would have enabled him to prevent an injury to one of the boys whose foot was caught, is a question for the jury, although he may have sounded the gong when far enough away to give ample warning, and, as soon as he saw that the boy could not or would not leave the track, may have done all in his power to stop the car before the injury.
2. A general exception to a charge covering a number of the elements of damages in a negligence suit does not cover the specific objection that the language of the court permitting a recovery for a pecuniary loss directly resulting from the injury would allow the infant plaintiff to recover compensation for his time before as well as after he had reached his majority, although, during infancy, his father is entitled to recover any wages he may earn.
3. Mental suffering which is a direct consequence of a physical injury may be considered by the jury in assessing the damages for such injury.
4. Charging the jury in a negligence case that damages could not be considered in excess of the sum claimed in the declaration can not prejudice the defendant, where the court was careful to say that the sum claimed should not be taken as a criterion to act upon, but only as a limit, beyond which the jury could not go.—*Advance Sheets*, July 16, 1906.

No. 244. Decided May 28, 1906.

IN ERROR to the Court of Appeals of the District of Columbia to review a judgment which affirms a judgment of the Supreme Court of that District in favor of plaintiff in an action to recover damages for personal injuries alleged to have been caused by negligence. Affirmed. See same case below, 33 Wash. Law Rep., 226. The facts are stated in the opinion.

*Messrs. George P. Hooper and Charles A. Douglas*, for plaintiff in error.

*Messrs. A. S. Worthington, William Meyer Levin, and Charles L. Frailey* for defendant in error.

Mr. Justice DAY delivered the opinion of the court:

This is an action to recover damages because of an injury received by Charles E. Severe, an infant, who was run over at a plank crossing of the railway company, the railroad then being in charge of the defendant, operating the same as receiver.

The plaintiff below recovered judgment in the Supreme Court of the District, which was affirmed in the Court of Appeals.

At the place of the accident there was a plank crossing, the planks laid between and on either side of the rails, at a point where a street was opened to the westward, and, on the other side of the track, a footpath, but no thoroughfare for vehicles. The crossing was one of the regular stopping places of the cars of the street railway near Riverdale, Md. The words "cars stop here" were on both sides of the telegraph pole at the crossing. At the time of the injury

plaintiff was six years and ten months old. His youngest brother, Raymond, was a little over five years of age, and with them another brother, Edward, about nine years old. The injured boy, at the time he was hurt, had his foot caught in a space between the rail and the edge of the plank on the inside. There was testimony tending to show that this opening was 2 to 2 11-16 inches wide. The accident happened between 2 and 3 o'clock in the afternoon of August 31, 1902. The testimony discloses that the boys had expected to meet their parents, returning from a visit, about 2 o'clock that afternoon, and went to the crossing for that purpose. Edward, the oldest boy, went to his father's house nearby to get a drink of water; while he was gone the youngest boy, Raymond, got his foot caught in the space between the west rail and the plank next the inside of the rail. Plaintiff came to the assistance of his little brother, whose foot he helped to extricate, and was himself caught in the space between the plank and the rail. Raymond ran to the house to notify Edward that the plaintiff's foot was caught. Together the two boys ran back towards the crossing and shortly thereafter the plaintiff was struck and so severely injured that it became necessary to amputate his leg below the knee.

In the view we take of this case we do not consider it necessary to state in detail the testimony as to the construction of the crossing and the alleged negligence in leaving the space in which the boy's foot was caught. Under the pleadings and the testimony the jury was directed to return a special verdict upon three propositions: 1. Was the defendant guilty of negligence in the improper construction or maintenance of the crossing? 2. Was the defendant guilty of negligence in the improper management of the car? 3. Did the motorman do all in his power to stop the car as soon as he saw the plaintiff's foot was caught in the space between the rail and plank? The jury answered the first and second questions in the affirmative; being unable to agree on the third, the plaintiff consented that it might also be answered in the affirmative.

In view of these special findings, if the issue concerning either of the first two of them was properly submitted to the jury upon sufficient evidence and found against the company, the judgment of the Court of Appeals must be affirmed.

In delivering the opinion of the Court of Appeals Mr. Chief Justice Shepard says:

"It is conceded, by reason of the special findings of the jury, that the defendant was guilty of negligence, not only in the construction and maintenance of the crossing, but also in the management and control of the car; that error in the instructions upon both points must be shown in order to obtain a reversal of the judgment, because either finding alone is sufficient support therefor."

It is insisted in argument here that the court ought to have taken the case from the jury because of the insufficiency of the evidence to sustain a verdict. In the view we take of the case as made and submitted concerning the conduct of the motorman at the time of the accident and the instructions given to the jury in

that connection, we do not deem it necessary to consider the correctness of the charge submitting the question as to the negligent construction of this crossing. We think the testimony was ample to carry the case to the jury upon the question of the negligent conduct of the motorman at the time of the injury, and that this issue was properly left to the jury under instructions which afford no ground for reversal.

Negligence only becomes a question of law to be taken from the jury when the facts are such that fair-minded men can only draw from them the inference that there was no negligence. If fair-minded men, from the facts admitted, or conflicting testimony, may honestly draw different conclusions as to the negligence charged, the question is not one of law but of fact, and to be settled by the jury under proper instructions. *Railroad Company v. Powers*, 149 U. S., 43; *Railroad Company v. Everett*, 152 U. S., 107.

In addition to the facts to which we have adverted upon the branch of the case which we deem it necessary to consider, the testimony tended to show that there was nothing to prevent the motorman from seeing the crossing for a distance more than sufficient to have avoided the injury by controlling or stopping his car; that the boy Edward waved his hat and "hollered" for the motorman "to stop," when the car was 50 or 60 feet away. A passenger who was on the car testified that his attention being called by the motorman ringing his bell he saw a larger boy than the one on the track, waving his hand. Another passenger testified that when from 60 to 100 yards from the place he saw three boys apparently standing on the platform or crossing. Plaintiff says that just before he was hurt he saw his brother waving his hat and "hollering" to the motorman, and that he too waved his hand at the motorman. Witnesses testified that the car when stopped came up with a sudden jolt. There was also testimony tending to show that boys were in the habit of playing at this crossing and running back and forth over it.

The motorman testified that he was in charge of the car and was on the Washington bound track at the time; that he saw the boys when he was about 300 or 400 feet away; when he first saw them there were three boys on the track, running and jumping backwards and forwards on the crossing. He sounded his gong when he approached, about 150 feet away, and repeatedly thereafter until he reached the boy; when he first saw that the boy was not going to get off the track he was about 30 or 35 feet away from him; that he then put on the brakes, reversed the power, and did everything possible to stop the car. He had often seen the plaintiff on the track at that place and on the crossing at Riverdale, Md.; that he had seen him remaining on the track until the car got close to him, when he would jump off the track, clap his hands, and laugh; had seen the plaintiff and other boys do the same thing; the first thing that indicated to him that the boy would not get off the track was when he saw that his foot was caught; that at that time he was from 30 to 35 feet from him; that he did not see the boys wave their hands or hats or making any mo-

tions to him or did not hear them calling to him. There was testimony tending to show on the part of the plaintiff below that he was not in the habit of playing at this crossing, and that he and his brothers had not been there before in the manner stated by the motorman. The motorman testified further that he saw the boy on the track when he was about 300 or 400 feet away.

We are of opinion that, in the attitude of the case on this subject, it was not error to leave to the jury, under proper instructions, to find whether or not there was negligence in managing the car just before the accident occurred. Upon this part of the case the instructions requested were as follows:

"If the jury shall find from the evidence that the motorman sounded his gong when he was far enough away from the plaintiff and his associates so that they had sufficient time to leave the track before the car reached them, he had the right to assume that they would do so, and he was not required to commence to stop the car until such time as he discovered that the plaintiff had his foot caught between the rail and the plank; and if they shall further find that, as soon as the motorman made such discovery, he did all in his power to stop the car before it struck the plaintiff, then they should find for the defendant.

"If the jury find from the evidence that the motorman sounded the gong when he was far enough away from the plaintiff and his associates so that they had sufficient time to leave the track before the car reached them; and if they shall further find that, as soon as the motorman saw that the plaintiff would not or could not leave the track before the car reached him, he did all in his power to stop the car before it struck the plaintiff, and shall further find that the construction was not negligent, then they should find for the defendant; and, in determining whether the motorman should have commenced to stop the car before he did, they may consider the fact, if they find it to be a fact from the evidence, that plaintiff and others were in the habit of standing on the track and leaving it as the car approached near them, and whether he saw any waving from anyone before he commenced to stop the car."

Upon this subject the court said to the jury:

"On the other question, as to whether the motorman did all that he could possibly do under the circumstances to avert this danger, you will have to consider all the testimony; not only that of the plaintiff, but of the defendant; and try to reconcile it so far as you can in order to ascertain where the fact lies. Was it prudent in that motorman, under all the circumstances of the case, to calculate that these children would be off from the track, and out of danger when he got there? Or was it requisite for him, as a prudent and reasonable man to have his car under control, so that he could stop very suddenly in case they were not out of danger when he got there? Of course, in determining that question, you are to consider what had been the habit of children about playing at that place. You are not to attribute any contributory negligence to the plaintiff, because this plaintiff is less than seven years of age, and the law does not give him discretion.

Adults have to look out for children of that kind. But, at the same time, he may have been in the habit of jumping off and on that track in such a way that the motorman might have been justified in concluding there would be no danger. You are to look at all the surrounding facts and see whether that is true, whether he was justified in that calculation. There was one boy still smaller than the boy who was injured, and, according to the motorman's own statement, the three boys were running back and forth across the track. It is for you to determine whether or not he should have gotten into close proximity to them without getting his car under such control that he could have stopped very suddenly if necessary to prevent an accident. Of course, after he saw that the boy's foot was caught, he must do everything to stop the car. But I call your attention to the time before he could see that the boy's foot was caught, and ask you to consider what it would have been prudent for him to do before that time, considering all the surrounding circumstances—considering the formation of this plank crossing, of this track, and of this platform, and considering the fact, as the motorman says it was a fact, that children were frequently there, running back and forth. Should he have anticipated that there might have been some kind of danger there, and should he have stopped his car or gotten it under control before he even saw any signal or waving, or before he saw that the boy's foot was caught? Of course, after he saw that the boy's foot was caught, it must be his duty to stop just as soon as he can, in order to prevent the accident. I have no doubt he did that. But, whether he discharged his whole duty towards these children, whom he admits having seen there before that time, is a question for the jury.

"In considering the question of the liability of the defendant on either of the two foregoing grounds, the jury are instructed that they have a right to take into consideration the evidence tending to show that the place where the accident occurred was a public crossing, and that it was frequented, and that it was known to the motorman in charge of the car to be frequented by young children, as well as by older persons.

"It is a question for the jury whether the motorman should have commenced to stop the car sooner than he did, and, in determining that question, they should take into consideration the fact, if they find it to be a fact, that the plaintiff and other boys were in the habit, at the point in question, of standing on the track until the car was very near them and then jumping off.

"In determining the question of how far the car was from the platform when the boys waved their hands they must be governed by the evidence, and not by speculation."

The substance of the requests of the defendant on this part of the case was that the motorman having sounded his gong far enough away to give warning to the boys in time to get off the track before the car reached them, did all his duty required, provided, that as soon as he saw that the boy could not or would not leave the track, he did all in his power to stop the car before the injury. On the other hand, the court left it to the jury to say whether, under the circumstances shown, the motorman was

or was not guilty of negligence in failing to get his car under control, so that in the event of probable injury he could quickly and promptly stop it.

We think the court did not err in its charge in this respect and that the motorman had no right to assume that boys of tender age, such as the plaintiff, might not be caught upon the crossing, notwithstanding his signals, which would have been adequate to warn one of mature years of approaching danger. Plaintiff was not a wrongdoer. He had gone upon the track with a view of rescuing his brother, and was himself caught and was unable to extricate his foot from the space between the rail and the plank. It is not contended that he was guilty of any contributory negligence. He was a child of tender years; the testimony is undisputed that children were in the habit of playing at and near this crossing; that they were at the time of the injury in full view of the motorman at least four hundred feet away, at which distance he admits he saw the boys. It was apparent that one of the boys was right upon the track. The jury may have found from the testimony, and the court could not have disturbed that conclusion, that the motorman acted upon the assumption that the boys would get off the track, and though running at a speed of eight to ten miles per hour, made no effort to get his car under control or to stop it, until he saw the boy's foot was caught, when it was too late to do otherwise than run over him. The car, running with electric power, could have been controlled and taken well in hand so as to be readily stopped at the crossing.

This court in *Union Pacific Railroad Co. v. McDonald*, 152 U. S., 262, 277, quoted approvingly from Judge Cooley in a Michigan case: "Children, wherever they go, must be expected to act upon childish impulse; and others who are chargeable with a duty of care and caution towards them must calculate upon this and take precautions accordingly." This view is supported by other well considered cases. *Powers v. Harlow*, 53 Mich., 507, 514; *Camden Interstate Railway Co. v. Broom*, 139 Fed. Rep., 595; *Forestall v. Milwaukee Electric Railway Co.*, 119 Wis., 495; *Strutzel v. St. Paul City Railway Co.*, 47 Minn., 543; *Gray v. St. Paul City Railway Co.*, 87 Minn., 280.

This is not a case of a sudden and unexpected coming of children upon a track. The jury may have found that if the motorman had acted prudently in view of the signals and warnings to stop, which the testimony tends to show were given, and the full view he had of the boys at the time of the accident, checked the car and kept it under control, the injury might have been avoided.

We think, upon principle and authority, the court properly left to the jury to find whether the motorman exercised that reasonable care to avoid injury to the boy which the circumstances of the occasion required. And to have given an instruction as requested by the plaintiff in error, which limited the duty of the motorman to sounding an alarm in time for the boy to get off the track, and to act upon the presumption that he would do so until he found it was impossible for the plaintiff to remove his foot, would have been an unwarranted charge.

It is further urged that the court erred in instructing the jury upon the question of damages. Upon this point the court said:

"The jury are instructed that if they find a verdict for the plaintiff they should render a verdict in his favor for such a sum (not exceeding the amount claimed in the declaration) as in their judgment will reasonably compensate him for the pain resulting from the injury, and for the loss of his leg; for the inconvenience to which he has been put, and which he will be likely to be put, during the remainder of his life in consequence of the loss of his leg; for the mental suffering, past and future, which the jury may find to be the natural and necessary consequence of the loss of his leg, and for such pecuniary loss as the direct result of the injury which the jury may find from the evidence that he is reasonably likely to sustain hereinafter in consequence of his being deprived of one of his legs."

The court's attention was not called to any particular in which this charge which covers a number of elements of damages was alleged to be wrong, only a general exception was taken to the charge as given in this respect. It has been too frequently held to require the extended citation of cases that an exception of this general character will not cover specific objections, which in fairness to the court ought to have been called to its attention, in order that, if necessary, it could correct or modify them. A number of the rules of damages laid down in this charge were unquestionably correct, to which no objection has been or could be successfully made. In such cases it is the duty of the objecting party to point out specifically the part of the instructions regarded as erroneous. *Baltimore & Potomac Railway Co. v. Mackey*, 157 U. S., 72, 86.

It is now objected that to permit a recovery for a pecuniary loss as covered in the instructions would allow the infant plaintiff to recover compensation for his time before as well as after he has reached his majority, and that during infancy his father is entitled to recover any wages he might earn. If the defendant wished the charge modified in this respect he should have called the attention of the court directly to this feature. The charge in this respect was general, permitting a recovery for a pecuniary loss directly resulting from the injury. It would be very unfair to the trial court to keep such an objection in abeyance and urge it for the first time in an appellate tribunal.

Furthermore, an objection is taken to the charge as to mental suffering, past and future. It is objected that this instruction permits a recovery for future humiliation and embarrassment of mind and feelings because of the loss of the leg. But we find no objection to the charge as given in this respect. The court said: "The jury are to consider mental suffering, past and future, found to be the necessary consequence of the loss of his leg." Where such mental suffering is a direct and necessary consequence of the physical injury, we think the jury may consider it. It is not unlikely that the court might have given more ample instruction in this respect, had it been requested so to do. But what was said limited the compensation to the direct consequences of the physical injury.



An instruction of this character was sustained in *Washington & Georgetown Railway Co. v. Harmon*, 147 U. S., 584. That there might be more or less continuous mental suffering directly resulting from a maiming of the plaintiff's person in an injury of this character was probable, and, where the jury was limited to that which necessarily resulted from the injury, we think there can be no valid objection or just ground of complaint. Of a charge of this character, in *Kenyon v. Gilmer*, 181 U. S., 22, 26, 33, L. ed. 110, 112, 9 Sup. Ct. Rep., 696, Mr. Justice Gray, speaking for this court, said: "But the instruction given only authorized them, in assessing damages for the injury caused by the defendants to the plaintiff, to take into consideration 'his bodily and mental pain and suffering, both taken together' ('but not his mental pain alone'), and such as 'inevitably and necessarily resulted from the original injury.' The action is for an injury to the person of an intelligent being, and when the injury, whether caused by wilfulness or by negligence, produces mental as well as bodily anguish and suffering, independently of any extraneous consideration or cause, it is impossible to exclude the mental suffering in estimating the extent of the personal injury for which compensation is to be awarded. The instruction was in accord with the opinions of this court in similar cases." We find no error in the charge in this respect.

As to the alleged error in charging the jury that damages could not be recovered in excess of the sum claimed in the declaration, the court was careful to say to the jury that the sum claimed should not be taken as a criterion to act upon, but that it was only a limit, beyond which they could not go. We can not see how the plaintiff in error was prejudiced by this instruction.

The judgment of the Court of Appeals is affirmed.

#### Accord and Satisfaction.

In *Hand Lumber Co. v. Hall*, decided by the Supreme Court of Alabama in May, 1906, (41 S., 78), it appeared that a client sent to his attorney a check containing the words "In full of all accounts." The attorney refused to accept the check, and proposed that the client should erase therefrom the words quoted. The client prepared another check and voucher. The voucher attached to the check recited that it was given in full of all services rendered. The attorney detached the voucher and collected the check. It was held that the transaction constituted an accord and satisfaction. The court said in part:

"It is quite true that section 1805 of the Code of 1896, declaring the effect of written releases, receipts, and discharges has no application to this case, because the plaintiff gave no writing of the kind mentioned in that section. A release, however, at least of a simple contract debt, need not be in writing, and no set form of words is necessary. It may be by parol, may be express or implied, or may result by operation of law. 24 Am. & Eng. Ency. Law, 2d ed., 284. The dictum in *Hart v. Freeman*, 42 Ala., 567, that the Code section corresponding with section 1805 of the Code of 1896 requires settlements for the composition of debts to be in writing, was de-

clared in *Singleton v. Thomas*, 73 Ala., 205, to be erroneous as a general proposition, although correct in the particular case wherein it was uttered. The questions for consideration in this case, therefore, are first, whether the claims of the plaintiff beyond the sum paid him were conceded, or whether they were disputed or unliquidated; and, second, whether, if the latter, they were discharged by what was written and done between the parties, taken in connection with the collection by the plaintiff of the check, under the circumstances shown by the undisputed evidence.

"The appellee contends that 'the evidence does not show, nor tend to show, the claim of the plaintiff against defendant for services sued for in this case was ever disputed, nor that the plaintiff's claims against J. D. Hand or Hand Export Company, or the Baldwin County Bank were ever denied,' while the appellant contends just the contrary. The evidence must, therefore, be examined to settle this question of fact, controverted between counsel. The plaintiff's suit was first brought for \$100, and then amended so as to claim \$250, and was upon the common counts. He testified to having been employed by defendant to render legal services in three cases, but had no contract as to the amount to be paid in any of the cases, and he offered evidence of attorneys as to what was a reasonable fee in each case. He claimed, prior to collecting the check, to which we refer more fully later on, that he should be paid \$30 in the 'Lady Jane Tug Case,' for which item he had presented a bill at one time for \$22.50, and when the check was received there was a suit pending by the plaintiff to recover the sum of \$30 for said fee. The plaintiff testified that he had a yearly retainer from Mr. Hand of \$50 for what we may designate generally as certain small legal services, not including the services for which this suit is brought. Mr. Hand, however, testified that he had an arrangement or contract with the plaintiff whereby he was to pay him \$50 per year for whatever services he might call upon him to render for himself or his companies; and that he employed plaintiff to do whatever he was called on to do for any of the companies the witness was interested in, which were the Hand Export Company, the Hand Lumber Company, the Hand Land Company, and the Baldwin County Bank. It was conceded that the retainer of \$50 for the year, whatever it included, had been paid. Hand further testified that on one occasion the plaintiff told him that the cases in Baldwin county were covered by the fee, meaning the retainer, while the witness said he told plaintiff he understood the retainer to also cover the 'Lady Jane Tug Fee.' Plaintiff, according to the testimony of the witness, replied that he thought otherwise, whereupon Hand said, according to his testimony, that he would see if the captain of the tug would pay that bill. This review of the evidence has disclosed, we think, a controversy as to the amount of one item, and, further, there was serious controversy as to whether the services were not all included in the retainer, which had been paid. Nor was any item of the account liquidated.

"The question of law then arises whether the receipt and collection of the check, under the

circumstances shown, settled plaintiff's claim in full. A plea of release is in the record, and appellee concedes it was sufficient as a pleading to present the defense on which appellant relies. The check and voucher as first sent the plaintiff were declined, and plaintiff would not receive the check in full of the services, as stated in the face of the check and the voucher. Plaintiff proposed, however, that if defendant would erase from the check the words 'in full of all accounts,' and return it—that is, the check—he would accept it as payment for his fee in the tug case. Hand did not do as plaintiff proposed, but prepared another check and voucher, under the same number, the voucher being attached to the check, and the latter on its face stating it was to cover voucher 478, that being the number of the voucher attached. From this voucher it appeared the check was given 'in full of all services rendered to any or all of the following companies, namely: Hand Lumber Company, Tug Lady Jane, Hand Export Company.' The plaintiff detached the voucher, collected the check, and thereupon sued the Hand Lumber Company in this action.

"We can not construe the correspondence and action of the parties otherwise than as constituting a proposal to the plaintiff to pay the amount of the check in full settlement of all claims mentioned in the voucher, and as the acceptance of the proposal by the plaintiff, thereby releasing the defendant from further liability; and the plaintiff will not be heard to say he accepted it only in payment of his fee in the tug case. The plaintiff must have known the tender was made on condition, and, having accepted and collected the check, was bound by the condition. 1 Cyc., 333. 'While a mere tender, though of the whole amount due, when unaccepted, does not operate to extinguish or satisfy the claim, yet when made in full of the amount due and accepted, without protest as to its sufficiency, the debt becomes extinguished. The creditor may reject a tender on condition that he receive it in full of his claim; but, if he accept it, he is bound by the condition, and will not be allowed to keep the money and repudiate the conditions.' *Hanson v. Todd*, 95 Ala., 328, 10 South, 354. The plaintiff, no doubt, in the course he pursued, supposed he was safe in doing so, because a somewhat similar action was held in *Hodges v. Tenn. Implement Co.*, 123 Ala., 573, 26 South, 490, not to constitute full satisfaction of the debt; but that case involved an undisputed indebtedness and is distinguishable from this."

To relieve one from a contract made while intoxicated, it is held, in *Kuhlman v. Wieben* (Iowa), 2 L. R. A. (N. S.), 666, that he must have been so completely under the influence of intoxicants as not to be able to understand the effect and consequences of the business transaction.

One furnishing a messenger for hire is held, in *Haskell v. Boston Dist. Messenger Co.* (Mass.), 2 L. R. A. (N. S.), 1091, not to be liable, in the absence of negligence, for loss, through dishonesty of the messenger, of property intrusted to him by a patron.

That the statute of limitations does not, under ordinary circumstances, commence to run against a suit in the nature of a creditor's bill until the claim has been reduced to judgment, is held, in *Ainsworth v. Roubal* (Neb.), 2 L. R. A. (N. S.), 988.

A master is held, in *Anderson v. Columbia Improv. Co.* (Wash.), 2 L. R. A. (N. S.), 840, not to be bound to instruct an employee as to the danger of felling tall trees.

A subcontractor undertaking to furnish steel frame work for a tank is held, in *Galbraith v. Illinois Steel Co.* (O. O. A., 7th C.), 2 L. R. A. (N. S.), 799, not to be liable to a property owner for losses due to collapse of the tank, although it would not have resulted but for his failure to perform the work according to contract.

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(United States Attorney for the District of Columbia)

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Evidence.

FREDERICK VAN DYNE, LL. M.,

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On Citizenship.

The thirty-seventh annual session opens on Wednes-  
day, October 3, 1906, at 8.30 p. m., in the Law School  
Building, 506 and 508 E street northwest, at which time  
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## RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to pro-  
ceedings in the Supreme Court of the District of Columbia, the  
publication of which is required by law or by Rules of Court or by  
any order of court, shall be published in THE WASHINGTON  
LAW REPORTER, during the time required by law, in addi-  
tion to any other papers which may be specially ordered or  
which may be selected by the parties.

## Legal Notices.

### FIRST INSERTION.

Charles Bendheim, Solicitor

In the Supreme Court of the District of Columbia.

Margaret McKernan v. Gerald V. McKernan et al.

No. 26,312. Equity Doc. 68.

The object of this suit is to procure a divorce from the  
defendant, Gerald V. McKernan, on the ground of adul-  
tery. On motion of the complainant, it is, this 11th day  
of September, 1906, ordered that the defendants, Gerald  
V. McKernan, Myrtle Brown, and Blanche Heckman,  
cause their appearance to be entered herein on or before  
the fortieth day, exclusive of Sundays and legal holidays,  
occurring after the day of the first publication of this  
order; otherwise the cause will be proceeded with as in  
case of default. Provided a copy of this order be pub-  
lished once a week for three successive weeks in The

Washington Law Reporter and The Evening  
[Seal] Star before said day. ASHLEY M. GOULD,  
Justice. A true copy. Test: J. R. Young,  
Clerk, by F. W. Smith, Asst. Clerk. 87-8t

William K. Quinter, Solicitor

In the Supreme Court of the District of Columbia.

James F. Hood et al., Trustees, Complainants, v.  
Louisa Cammack et al., Defendants.

Equity, No. 26,483.

The object of this suit is to quiet title by adverse  
possession in the complainants to the following de-  
scribed property, situate in the District of Columbia, to-  
wit: The north forty-nine (49) feet and six (6) inches of  
original lot 16, in square 42, beginning for the same at  
the northeast corner of said lot on the line of Twenty-  
third street west, and running thence south 49 feet 6  
inches; thence west 75 feet; thence north 19 feet; thence  
west 47 feet 2½ inches to a thirty-foot alley; thence north  
30 feet and 6 inches, and thence east 122 feet and 2½ inches  
to the place of beginning. On motion of the complain-  
ants, it is, this 18th day of September, 1906, ordered that  
the defendants, Louisa Cammack, Anna K. Nevins,  
Louise E. Nevins, Henry J. Key, M. Catherine Key  
Jenkins, Virginia P. Key Dangerfield, William Key,  
Edward Key, and the unknown heirs, devisees, and  
alienees of the following-named persons: Elizabeth Key  
Johnson, Rebecca Key Tyson, Emily L. Key Hoffman,  
Louisa Key, and Philip Barton Key, deceased, cause  
their appearance to be entered herein on or before the first  
rule day occurring after the expiration of forty days from  
this date; otherwise this cause will be proceeded with as  
in case of default. Provided a copy of this order be pub-  
lished in The Washington Law Reporter and The Even-  
ing Star once a week for three successive

[Seal] weeks before said return day. ASHLEY M.  
GOULD, Justice. A true copy. Test: J. R.  
Young, Clerk, by J. W. Latimer, Asst. Clerk. 87-8t

E. A. Newman, Solicitor

In the Supreme Court of the District of Columbia.

Claudia M. Moran and Another v. The Unknown  
Heirs or Devisees of John B. Bernaben, Deceased.  
No. 26,501. Equity Doc. 59.

The object of this suit is to obtain a decree of the court  
vesting title by adverse possession in the complainants  
according to their respective rights in and to all that  
certain piece or parcel of ground and premises situate  
in the city of Washington and District of Columbia, and  
known and distinguished as and being part of original  
lot 6 in square 426. Beginning for said part at the north-  
west corner of said lot and running thence east 78.67 feet  
to the line of the property conveyed to Young by deed  
recorded in liber No. 1721, folio 459, one of the land  
records of the District of Columbia; thence south with  
the west line of said property 23.58 feet; thence west  
22.47 feet to the line of the property conveyed to the  
heirs of Martha J. Greer by deed recorded in liber No.  
1751, folio 194, of the said land records; thence north 0.95  
of a foot, and thence southwesterly 56.20 feet, more or  
less, to the line of 8th street west, and thence north  
along the line of said 8th street 23.58 feet to the said  
place of beginning. On motion of the complainants, it  
is, this 7th day of September, 1906, ordered that the de-  
fendants, the unknown heirs or devisees of John B.  
Bernaben, deceased, cause their appearance to be en-  
tered herein on or before the first rule day occurring  
after the expiration of three months from this date;  
otherwise the cause will be proceeded with as in case of  
default. Provided a copy of this order be published  
twice a month for three months in The Washington  
Law Reporter and The Washington Post and The Even-  
ing Star before said day. ASHLEY M. GOULD, Jus-  
tice. True copy. Test: J. R. Young, Clerk, by J. W.  
Latimer, Asst. Clerk. sept. 14, 21; oct. 12, 19; nov. 9, 16

## Legal Notices.

**E. H. Thomas and A. B. Duvall, Attorneys**  
In the Supreme Court of the District of Columbia,  
Holding a District Court.

**In re the Opening of a Minor Street in Square 512, in the District of Columbia.** District Court No. 692.  
Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of section 1608 et seq. of the Code of Laws for the District of Columbia and "An act making appropriations to provide for the expenses of the District of Columbia for the fiscal year ending June 30th, 1907, and for other purposes, approved June 27th, 1906," have filed a petition in this court praying the condemnation of the land necessary for the opening of a minor street from 4th street to 5th street, in square No. 512, in the District of Columbia, as shown on a map or plat filed with said petition, as part thereof, and praying, also, that a jury of five judicious, disinterested men, not related to any person interested in these proceedings, and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States Marshal for the District of Columbia to assess the damages each owner of land to be taken may sustain by reason of the opening of the aforesaid minor street, and the condemnation of the land necessary for the purposes thereof, and to assess the benefits resulting therefrom, including the expenses of these proceedings, as provided in and by the Code and act of Congress heretofore referred to. It is, by the court, this 7th day of September, ordered that all persons having any interest in these proceedings be, and they are hereby, warned and commanded to appear in this court on or before the 24th day of September, A. D. 1906, at 10 o'clock A. M., and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be empaneled and sworn herein; and it is further ordered that a copy of this notice and order be published once in The Washington Law Reporter and once in The Washington Evening Star, Washington Post, and The Washington Times, newspapers published in said District, before the said 24th day of September, A. D. 1906. It is further ordered that a copy of this notice and order be served by the United States Marshal for the said District, or his deputies, upon such of the owners of the fee of the land to be condemned herein as may be found by the said marshal or his deputies within the District of Columbia before the said 24th day of September, A. D. 1906.

By the Court: ASHLEY M. GOULD, Justice.  
[Seal] A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 87-St

**John B. Larner, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Little C. Osmond, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Friday, the 5th day of October, 1906, at 10 o'clock A. M., as the time, and said courtroom as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 12th day of September, 1906. THE WASHINGTON LOAN AND TRUST COMPANY, by Frederick Elcheberger, Trust Officer, by John B. Larner, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,184. Administration. [Seal.] 87-St

**H. G. Kimball, Solicitor**  
In the Supreme Court of the District of Columbia.  
Eugenia Rollins, Complainant, v. William T. Rollins et al., Defendants. Equity No. 26,488.

The object of this suit is to procure a divorce from the defendant, William T. Rollins, on the ground of adultery. On motion of the complainant, by her solicitor, it is, by the court, this 7th day of September, A. D. 1906, ordered that the defendants, Cleo Johnson and Nellie McNeill, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published in The Washington Law Reporter and The Evening Star once a week for three successive weeks. ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 87-St

[Seal] A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 87-St

## Legal Notices.

**Irving Williamson, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Jesse C. Weir, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 11th day of September, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hand this 11th day of September, 1906. THEO. F. SARGENT, Pension Bureau; ADA E. COE, 4405 Kansas ave., Petworth, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,935. Administration. [Seal.] 87-St

**J. A. Burkart, Solicitor**  
In the Supreme Court of the District of Columbia.  
George M. Strachan et al. v. Thaddeus S. Strachan et al. Equity No. 25,236.  
ORDER NISI.

Joseph A. Burkart, trustee, having reported sale of the property being sublot No. 40, in square 174, Washington, D. C., to Ernest Dammann, for the sum of two thousand seven hundred and fifty (\$2,750) dollars, it is, this 12th day of September, 1906, ordered that the said sale be finally ratified and confirmed, unless good cause to the contrary be shown on or before the 15th day of October, 1906. Provided that a copy of this order be published in The Washington Times and The Washington Law Reporter once a week for three successive weeks before the aforesaid day. ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 87-St

**James B. Horgan, Attorney**  
Supreme Court of the District of Columbia,  
Estate of Thomas Yates, Deceased.  
No. 13,902. Administration Docket.

Application having been made herein for letters of administration on said estate by Ida Herbron, it is ordered, this 12th day of September, A. D. 1906, that the unknown heirs and next of kin of said deceased, and all others concerned, appear in said court on Thursday, the 25th day of October, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 87-St

[Seal] not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 87-St

**John B. Larner, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William De Hatz, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of September, 1906. THE WASHINGTON LOAN AND TRUST COMPANY, by Frederick Elcheberger, Trust Officer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,820. Administration. [Seal.] 87-St

**Milton Strasburger, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Charles F. Miller, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of September, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of September, 1906. FRANK G. MILLER, 1414 K st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,935. Administration. [Seal.] 87-St

**Legal Notices.****A. S. Worthington, Solicitor.****In the Supreme Court of the District of Columbia,  
Holding an Equity Court.****Alexander D. Johnson et al. v. Washington L. Berry  
et al. No. 28,404. Equity.**

The object of this suit is to have the court appoint a trustee or trustees in the place and stead of Eliza T. Berry and Washington L. Berry, who were named as trustees under the will of the late Washington Berry, and to vest in such trustee or trustees so to be appointed the legal title, but not the equitable title, to about four hundred and ten acres of land in the District of Columbia, formerly known as Metropolis View, said land being included within the boundaries of the subdivision of Metropolis View made by Thomas W. Berry and John A. Middleton, trustees, which is recorded in the office of the surveyor of the District of Columbia, in liber Gov. Shepard, at folio 41. It appearing to the court that a summons for all the defendants in the above entitled cause has been duly issued and returned "not to be found" as to all of said defendants, and the non-residence of all of said defendants being further proved to the satisfaction of the court by the affidavit of E. Benton Berry, this day filed, on motion of the complainants it is, this 7th day of September, A. D. 1906, ordered that the defendants, Washington L. Berry, Tiernan B. Berry, William F. Berry, Thomas C. Berry, Maria Hughes Kennedy, Adelaide Savage Mealey, Lillie C. Bowie, Henry A. Berry, Edward L. Berry, and Martha A. Berry, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in the case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter, The Washington

[Seal] Post, and The Evening Star, all being newspapers published in the City of Washington, District of Columbia. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. 87-3t

**John R. Larnar, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Samuel Jackson, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Friday, the 19th day of October, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 12th day of September, 1906. THE WASHINGTON LOAN AND TRUST COMPANY, by Frederick Eichelberger, by John B. Larnar, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,144. Administration. [Seal.] 87-3t

**H. Marshal Wheatley, Attorney****In the Supreme Court of the District of Columbia,  
Holding a Probate Court.****Estate of Benjamin Franklin, Deceased.  
Administration. No. 18,796.**

Application having been made herein for probate of the last will and testament of Benjamin Franklin, deceased, as a will of real estate, by the Wesleyan Theological College, it is ordered, this 7th day of September, A. D. 1906, that John Franklin, Leonard Franklin, Lena Franklin, Hartley Franklin, Thomas Franklin, Harriet Franklin, Harry Franklin, Minnie Franklin, Eliza Somers, Sarah Taylor, Mildred Franklin, Robert Franklin, Sarah Franklin, Rev. Melvin Taylor, and Rev. William I. Shaw, and all others concerned, appear in said court on the 1st day of November, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 87-3t

**Legal Notices.****John J. Brosnan, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Thomas Coakley, Deceased.****No. 18,816. Administration Docket 85.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Maurice Fitzgerald and William Ryan, it is ordered, this 12th day of September, A. D. 1906, that John Coakley, William Coakley, Michael Coakley, James Coakley, and all others concerned, appear in said court on Wednesday, the 17th day of October, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than

[Seal] thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 87-3t

**SECOND INSERTION.****Louis A. Dent, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of Edward D. Perkins, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 6th day of September, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 6th day of September, 1906. EDWARD GREEN, 10th st. and Va. ave. S. W.; E. MADISON HALL, 10th st. wharves S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,898. Administration. [Seal.] 86-3t

**John E. Taylor and Douglass & Douglass, Solicitors****In the Supreme Court of the District of Columbia.****Mary A. Knopp et al., Complainants, v. Unknown  
Heirs of Francis Deakins et al., Defendants.****No. 28,470. Equity Doc. 58.**

The object of this suit is to quiet title by adverse possession in the complainants to the following described property, situate in the District of Columbia, to wit: Lot 188 in square numbered 1278, formerly square 103, in Beatty and Hawkins' Addition to Georgetown; beginning on 83d street at a point forty feet north from the northwest corner of 33d and Q streets and running thence on said 33d street north 26 feet, 8 inches; thence west to the rear line of said lot; thence south 13 feet, 4 inches; thence southeast and east in accordance with the original record line of said lot to the beginning. On motion of the complainants, it is, this 6th day of September, 1906, ordered that the defendants, the unknown heirs, devisees, and assignees of Francis Deakins, and the unknown heirs, devisees, and assignees of the survivor of Stephen B. Balch, Thomas Corcoran, George Thompson, William Whann, John Crookshanks, James Calder, Christian Kurtz, John Peter, David English, Henry Knowles, members of the Committee of the Presbyterian Congregation in Georgetown, their unknown heirs, devisees, or assignees; the unknown heirs, assignees, or devisees of Fleury Lewis, and the unknown persons claiming by, through, or under them, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of one month from this date; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Times before said day. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 86-3t

[Seal]

F. E. Cunningham, Asst. Clerk. 86-3t

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**Legal Notices.****Charles W. Darr, Attorney**

In Justice's Court of the District of Columbia,  
Subdistrict No. 3.  
**Stephen Th. Westdal, Plaintiff, v. Emory B. Buz-**  
**hardt, Defendant.**  
No. 8975.

The object of this suit is to recover two hundred and sixty-eight dollars and twenty-four cents, with interest and costs of suit, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 31st day of August, 1906, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. THOS. H. CAL-LAN, Justice of the Peace, 627 F st. N. W. [Seal.] 36-St

**Thos. C. Bradley, Solicitor**

In the Supreme Court of the District of Columbia,  
Holding an Equity Court.  
**Lena A. Walker, Complainant, v. Stanley D. Walker**  
**and Mary Gonzales, Defendants.**  
No. 25,855. Equity.

The object of this suit is to obtain a divorce a vinculo matrimonii from the defendant, Stanley D. Walker. On motion of the complainant it is, this 2d day of July, A. D. 1906, ordered that the defendants, Stanley D. Walker and Mary Gonzales, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law

[Seal] Reporter and The Washington Post. WEN-DELL P. STAFFORD, Associate Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 36-St

**Philip H. Walker, Solicitor**

In the Supreme Court of the District of Columbia.  
The Title Guaranty and Surety Company v. Leslie M. Shaw et al. No. 28,478. Equity Doc. 53.

The object of this suit is to enjoin the defendant Shaw, as Secretary of the Treasury, from paying, and the defendants Galtwait and Zibell from receiving, a fund in the Treasury of the United States to the credit of a contract between Galtwait and the United States for the construction of a post-office building at Anderson, Indiana, the appointment of a receiver of said fund, and its distribution among the unpaid creditors of Galtwait, who furnished labor and material for the prosecution of the said contract. On motion of the complainant, it is, this 5th day of September, 1906, ordered that the defendants, Fred M. Galtwait and William F. Zibell, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive

[Seal] weeks in The Washington Law Reporter and The Washington Post before said day. ASH-LEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 36-St

**John Baum, Solicitor**

In the Supreme Court of the District of Columbia.  
**Ruth I. McNaney, Infant, by John J. McNaney, her**  
**next friend, v. Mary M. Babson et al.**  
In Equity, No. 26,335.

The trustees herein having reported a written offer to purchase for the sum of \$4,000 in cash, the property described in this proceeding, to wit: Lots ten (10), eleven (11), and twelve (12) in square 948, in the city of Washington, in the District of Columbia, it is, this 31st day of August, A. D. 1906, ordered that said trustees be, and they are hereby, authorized to accept said offer, and upon compliance with the terms of sale by the purchaser, the said sale shall stand ratified and confirmed, unless cause to the contrary be shown on or before the 1st day of October, 1906. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said

[Seal] last mentioned date. WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. 36-St

**Legal Notices.****Joseph H. Stewart, Attorney**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Caleb I. Taylor, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of August, 1906. ANNIE DANIEL, by Joseph H. Stewart, her attorney, 211 C st. S. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,533. Administration. [Seal.] 36-St

**Wilson & Barksdale, Attorneys**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Harriet Seton Harris, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 31st day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of August, 1906. FANNIE C. WILLIS, 1443 Q st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,533. Administration. [Seal.] 36-St

**Joseph H. Stewart, Attorney**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Louisa M. Lampton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of August, 1906. EDWARD W. LAMPTON, 1541 14th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,532. Administration. [Seal.] 36-St

**Delmas C. Stutler, Attorney**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Margaret A. Vanderslice, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of September, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of September, 1906. WILLIAM E. AMBROSE, 458 Louisiana ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,806. Administration. [Seal.] 36-St

**Hayden Johnson, Attorney**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John Lippincott, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of August, 1906. WM. W. BOARMAN, Columbian Bldg. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,323. Admn. [Seal.] 36-St



**Legal Notices.****Wm. A. McKenney, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Lawrence P. Graham, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of September, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of September, 1906. AMERICAN SECURITY & TRUST CO., by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,553. Admn. [Seal.] 36-3t

**T. Percy Myers, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscribers who were by the Supreme Court of the District of Columbia granted letters of administration on the estate of James Dowd, deceased, have with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 24th day of September, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 5th day of September, 1906. T. PERCY MYERS, JOHN J. BROSNAN, by T. Percy Myers, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,009. Administration. [Seal.] 36-3t

**Chas. F. Diggs, Solicitor****In the Supreme Court of the District of Columbia,  
Holding an Equity Court.**

**Henry W. Thurston v. Francis B. Clark, Charles B. McLellan, Henry F. Woodard, and Mable Grace McKay, executors of the estate of Nathaniel McKay, deceased.** Equity, No. 25,768.

The object of this suit is to have declared null and void an assignment by Henry W. Thurston to Francis B. Clark, of a debt of \$11,211.69, due by the estate of Nathaniel McKay, deceased, to the said Thurston, and also to have the reassignment of the said debt by the said Clark to the defendant, Charles B. McLellan, declared null and void; and for an accounting by the said Clark for money received by him on account of the said debt, from the executors of the estate of the said Nathaniel McKay, deceased; and for a decree declaring the said debt to be the property of the said Thurston, and for an order directing the said executors to pay over to the said Thurston the amount of money now in their hands, which may be due on account of the said debt, as per a compromise agreement, authorized by this court. On motion of the complainant, it is, this 6th day of September, A. D. 1906, ordered that Francis B. Clark and Charles B. McLellan, two of the defendants in the above entitled cause, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter, Evening Star and Washington Post. By the

[Seal] Court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 36-3t

**Delmas C. Stutler, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Martin Galtley, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of September, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of September, 1906. DELMAS C. STUTLER, 458 L. ave., N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,891. Administration. [Seal.] 36-3t

**Legal Notices.****THIRD INSERTION.****Wm. A. McKenney, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Alexander M. Bell, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 24th day of September, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 27th day of August, 1906. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary, by Wm. A. McKenney, Attorney. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,130. Administration. [Seal.] 35-3t

**Erskine Gordon, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of John A. Bryan, Deceased.****No. 13,864. Administration Docket.**

Application having been made herein for letters of administration on said estate, by Washington Safe Deposit Company, Incorporated, it is ordered this 28th day of August, A. D. 1906, that Samuel M. Bryan, and all others concerned, appear in said court on Monday, the 1st day of October, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WEN- [Seal] DELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 35-3t

**Wolf & Cohen, Attorneys****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Jacob J. Appich, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of August, 1906. CAROLINE APPICH, care of Wolf & Cohen. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,887. Administration. [Seal.] 35-3t

**Wolf & Cohen, Attorneys****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Patrick H. Riley, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of August, 1906. SIMON WOLF, care of Wolf & Cohen, Attorneys, 14th and G sts. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,811. Admn. [Seal.] 35-3t

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W.



**Legal Notices.**

**Victor H. Wallace, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Cyrus Snyder, Deceased.**  
**No. 13,850. Administration Docket —.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Julia N. Snyder, the wife of the decedent, and the executrix named in said last will and testament, it is ordered, this 28th day of August, A. D. 1906, that Charles C. Snyder, and all others concerned, appear in said court on Monday, the 8th day of October, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereby be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WEN-

[Seal] **DELL P. STAFFORD, Justice.** Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 85-3t

**Lewis F. Lindal, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William W. Stone, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of August, 1906. C. E. KING, 1803 14th st. N. W. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,836. Administration. [Seal.] 85-3t

**Samuel Maddox, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Hugh J. Kress, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 14th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of August, 1906. GEO. E. BARBER, 426 11th st. S. W. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,868. Administration. [Seal.] 85-3t

**Ralston & Siddons, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Ferdinand Weller, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 27th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of August, 1906. FERDINAND A. WELLER, 2020 15th st. N. W. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,878. Administration. [Seal.] 85-3t

**John E. Laskey and Harvey Given, Solicitors**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**

**Roberta A. Myers, Complainant, vs. Willard H. Myers et al., Defendants.** Equity, No. 26,311.  
 The object of this suit is to procure a divorce from the defendant, Willard H. Myers, on the ground of adultery. On motion of the complainant, it is, this 27th day of August, A. D. 1906, ordered that the defendant, Willard H. Myers, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default.

[Seal] **WENDELL P. STAFFORD, Justice.** True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 85-3t

**Legal Notices.**

**George H. Lamar, Solicitor.**

**In the Supreme Court of the District of Columbia.**  
**Edwin E. Overholt v. William B. Matthews, Dudley A. Tyng, C. Prayn Stringfield, and The Overholt Railway Signal Company, a Corporation under the laws of the State of West Virginia.**

In Equity, No. 26,284. Doc. 58.

On motion of the plaintiff, by George H. Lamar, his attorney, it is, this 28th day of August, 1906, ordered that the defendants, Dudley A. Tyng and C. Prayn Stringfield, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter, The Washington Times, and The Washington Post; otherwise the cause will be proceeded with as in case of default. The object of this suit is to secure against defendants, Matthews, Tyng, and Stringfield, an accounting and discovery in respect to a certain invention, and the stock of defendant corporation, and the proceeds arising from the disposition of a part thereof, the production and surrender of all books and papers of defendant corporation, an injunction restraining the sale or the transfer of certain stock of defendant corporation, and an order requiring the surrender and transfer thereof to complainant upon terms of equity, and for general relief. By the Court:

[Seal] **WENDELL STAFFORD, Justice.** True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 85-3t

**A. H. Bell, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Caroline Lochboehler, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of August, 1906. NICHOLAS LOCHBOEHLER, Conduit Road, D. C. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,784. Administration. [Seal.] 85-3t

**Samuel Maddox, Solicitor**

**In the Supreme Court of the District of Columbia.**  
**Mary Maguire v. Mary T. Diggins et al.**

No. 24,565. Equity.

Samuel Maddox, Francis H. Stephens, and Leon Tobriner, trustees, having reported the sale to Catherine Quigley of the east twenty-one and sixty-seven hundredths (21.67) feet front of lot four (4) in square four hundred and seventy in the city of Washington, District of Columbia for the sum of eleven hundred and fifty dollars (\$1,150.00), it is, this 28th day of August, A. D. 1906, ordered that said sale be and it is finally ratified and confirmed unless cause to the contrary be shown on or before the 28th day of September, A. D. 1906. Provided a copy of this order be published once a week for three successive weeks before said last-mentioned date in The Washington Law Reporter. By the Court: WEN-

[Seal] **DELL P. STAFFORD, Justice.** True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 85-3t

**Wm. A. McKenney, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Philo J. Lockwood, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 24th day of September, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 27th day of August, 1906. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary, by Wm. A. McKenney, Attorney. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,103. Admn. [Seal.] 85-3t

# The Washington Law Reporter

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### Death of Former Chief Justice Alvey.

The announcement of the death of former Chief Justice Richard H. Alvey, of the Court of Appeals of this District, which occurred at his home in Hagerstown, Md., on Friday evening, September 14, 1906, was the occasion of profound sorrow, not only to his former associates on the bench and the members of the bar, but to the entire community. Judge Alvey had reached the advanced age of 81 years. His life was rich in the honors coming to him, but his fame will rest chiefly upon his brilliant career on the bench of Maryland and of this District, which extended over a period of nearly thirty-eight years. Judge Alvey was more than a lawyer of ability and experience—he possessed in a rare degree the qualifications of a great judge. As was fitly said of him by Mr. Wm. F. Mattingly, speaking for the bar, on the occasion of his retirement, he was “one who had for his object the ascertainment of truth, and who brought to the attainment of that object more than usual ability, with no horror for work; one in whose hands the sword of justice became a staff upon which the innocent and those in whom the right was might lean for support and feel its safety.”

Judge Alvey was the first Chief Justice of the Court of Appeals of this District, receiving the appointment in April, 1893, and serving until

December 31, 1904, when he retired. In that position he won not only the profound respect of the bar for his learning and ability as a judge, but its cordial regard and esteem for him as a man; and no greater good fortune can be wished for the court or for the community than that those who shall hereafter fill that high station shall, in ability and character, measure up to the standard set by him.

### Georgetown University School of Law.

Attention is invited to the announcement, in another column, of the thirty-seventh annual session of the Georgetown University School of Law, which opens on Wednesday evening, October 3, 1906. No school in the country surpasses this in the exceptional advantages afforded for the successful study of the law. Two courses are offered—the first a three years' course leading to the degree of bachelor of laws, and a fourth year or post-graduate course, the successful completion of which entitles the student to the degree of master of laws. The method of instruction pursued in this institution, embracing both the lecture and “quiz” features, is thorough and systematic, and well calculated to effect the best results. The fourth year or post-graduate course affords a splendid opportunity to those desiring an advanced course of study, and may be pursued with profit, not only by law students, but as well by lawyers engaged in practice and by those desiring legal training as a complement to their general education.

The faculty of this institution is one of unusual ability, embracing six of the nine judges on our local courts, prominent members of the bar, not only of this District, but of other jurisdictions, and others who have attained high rank as teachers of the law.

Already the enrollment of students for the next session is quite large. The secretary, Mr. Richard J. Watkins, may be found at the Law Building, 506-508 E street N. W., daily, and those intending to enroll are requested to do so before the opening night.

### National University Law School.

The thirty-eighth annual session of the National University Law School will open on Monday evening, October 1, 1906. The sessions of the school are held in the evening exclusively, affording an excellent opportunity to those engaged in other employments during the day to prosecute the study of the law successfully. The faculty is an able one, and the aim is to give the student a practical as well as theoretical training in the law. A complete three-year course is offered, but by diligent application the degree of bachelor of laws can be secured at the end of the second year. A post-graduate practice course of technical instruction leading in one year to the degree of master of laws is also offered.

Former Chief Justice Richard H. Alvey.

Richard H. Alvey, former Chief Justice of the Court of Appeals of the District of Columbia, was born in St. Mary's County, Maryland, in March, 1826, his father being a member of an old Maryland family of that section located there since the days of Lord Baltimore. His early education was acquired in the public schools of St. Mary's County. In 1844, upon securing a position in the clerk's office of Charles County, he began the study of law, and in 1849 was admitted to the bar, removing the following year to Hagerstown, Maryland, and entering upon the practice of his profession.

He opposed a resort to arms in 1861, but in 1862, on arrival of the Union army at Hagerstown, he was arrested at his office at night by a military squad and charged with holding communication with the enemy. He was detained for some days as a prisoner at Hagerstown, and then sent to Fort McHenry, Baltimore, from there to Fort La Fayette, New York, and thence to Fort Warren, Boston harbor, where he was confined until the following February, when he was paroled and permitted to return home. It is stated and generally believed that only the fact that in the civil war his sympathies were on the side of the South prevented his appointment to the position of Chief Justice of the United States to fill the vacancy occasioned by the death of Chief Justice Waite.

On the close of the war Judge Alvey was active in the contest for the restoration of rights of citizens of Maryland who had been disfranchised. To remedy the evils of the jury system he drafted and carried through the enactment of the present jury law of Maryland. He was a member of the constitutional convention of 1867, and took an active part in its proceedings. Under the new constitution he was elected Chief Judge of the Fourth Judicial Circuit, which position made him one of the judges of the Maryland Court of Appeals. He was re-elected in 1882, and became Chief Judge of the Maryland Court of Appeals upon the retirement of Chief Judge Bartol.

In 1893, upon the passage by Congress of the act creating the Court of Appeals of this District, he was appointed by President Cleveland as the first chief justice of that court, taking his seat immediately thereafter. Two years later his talents received further recognition by his appointment as one of the commission to settle the boundary disputes between Venezuela and British Guiana. The mission was an exceedingly delicate one, requiring for its exercise wisdom, tact, and wide knowledge; and Judge Alvey gained additional fame by the highly creditable manner in which he discharged its duties.

In the thirty-eight years of his service on the bench it is estimated that Judge Alvey was the author of not less than 3,000 opinions. Those delivered by him while on the Court of Appeals of this District are reported in The Washington Law Reporter and the official reports of the court. In clearness of expression, logical statement, and avoidance of obiter and unnecessary verbiage, they are model deliverances.

After his retirement from the Court of Appeals of this District, on January 1, 1905, Judge Alvey lived quietly at his home in Hagerstown,

Md. There the summons came to him, and on the evening of Friday, September 14, 1906, his life, so rich in honors and in useful service of his State and nation, ended. His second wife, who was a daughter of the late Dr. J. C. Hayes, of Washington County, Maryland, and eight children survive him. His funeral was held on Monday afternoon, September 17, and was largely attended. The bench and bar of this District were represented by several of the judges and court officials and a number of the members of the bar.

#### Recent Important Bankruptcy Decisions—American Bankruptcy Reports for September, Vol. 16.

**Bankruptcy Claims—Money Deposited with Bankrupt for Safe Keeping—Mingling Funds.**—Under the rule prescribed by section 70a of the Bankruptcy Act, that the trustee shall be vested by operation of law with the title of the bankrupt, as of the date of his adjudication, to non-exempt property which prior to the filing of the petition could have been transferred or levied upon and sold under judicial process against him, it has been held in *In re Royea*, 16 Am. B. R., 141, that money intrusted to the bankrupt for safe keeping, and deposited to his credit in bank may be claimed by the owner out of the balance which came into the hands of the trustee although it can not be specifically identified, it appearing that at all times the bankrupt's account at the bank exceeded the said amount so intrusted to him.

**Priority of Bankruptcy Debts—Cost in Attachment.**—A provision of a State insolvent law, making the costs incurred in an attachment suit a preferred claim, if the claim upon which the suit was commenced is proved against the estate of the debtor, has been held in *In re The Copper King, Limited*, 16 Am. B. R., 148, to be in conflict with and therefore suspended by section 67f of the Bankruptcy Act, 1898, where the attachment is obtained within the four-month period.

**Jurisdiction of Bankruptcy Court Over Exempt Property—Enforcement of Liens Against.**—It has been held in *In re Castleberry*, 16 Am. B. R., 159, that the only jurisdiction that a court of bankruptcy has over exempt property, is to set it aside, but when the exemption claimed is in money held by the trustee, the court will hold the fund until proper proceedings can be instituted and the money sequestered by a court of competent jurisdiction for the benefit of parties in interest and in the meantime will refuse the bankrupt his discharge.

**Bankruptcy Preference—Recovery by Suit in Equity.**—The District Court, Western District of New York, has held, in *Parker v. Black*, 16 Am. B. R., 202, that a trustee in bankruptcy may maintain a suit in equity to recover a voidable preference, and that a payment within the four months' period by an insolvent debtor to a creditor having reasonable cause to believe that it was intended thereby to give him a preference may be recovered by the trustee irrespective of the intent of the bankrupt in making the payment.

## Supreme Court of the United States.

MARIAN L. LOONEY, ADMINISTRATRIX,  
PLAINTIFF IN ERROR,

v.

METROPOLITAN RAILROAD COMPANY  
ET AL.

STREET RAILWAYS; INJURY TO EMPLOYEE; NEGLIGENCE; CONTRIBUTORY NEGLIGENCE.

1. A street railway pitman, by unnecessarily touching the uninsulated parts in adjusting the leads connecting the motive power of a street-car with the overhead current, relieves the company from liability for his death from the resulting shock, although the conductor of the car may have been negligent in permitting the trolley pole to come in contact with the trolley wire.
2. The existence of defects in the insulation which would render a street railway company liable for the death of an employee occasioned by a shock received in adjusting the leads connecting the motive power of a car with the overhead current can not be inferred from the presumption of the exercise of due care on the part of the person killed, although, in the absence of a leak in the insulation, no shock could have been received unless he had unnecessarily touched the uninsulated ends of the leads.

No. 173. Decided February 19, 1906.

IN ERROR to the Court of Appeals of the District of Columbia to review a judgment which affirmed a judgment of the Supreme Court of the District, entered on a directed verdict in favor of the defendants in an action to recover damages for the alleged negligent killing of the plaintiff's intestate. Affirmed.

See same case below, 38 Wash. Law Rep. 39. The facts are stated in the opinion.

*Mr. Maurice D. Rosenberg, Mr. Alexander Wolf, and Mr. Simon Lyon* for plaintiff in error.

*Mr. J. J. Darlington* for defendants in error.

*Mr. Justice McKenna* delivered the opinion of the Court:

Action brought by plaintiff as administratrix of the estate of James F. Looney, deceased, against the defendants, for damages for the death of her intestate, alleged to have been caused by defendants. Judgment went against plaintiff in the Supreme Court of the District of Columbia, which was affirmed by the Court of Appeals.

After the plaintiff had rested her case the court directed the jury to return a verdict for the defendants. The correctness of this ruling is the question in the case.

The declaration consists of four counts. The first three allege the employment of the deceased by each of defendant companies respectively. In the fourth the allegation is that he was rightfully and lawfully in the discharge of his duties.

Looney was employed as a "pitman" by the Washington and Great Falls Railroad Company (now the Washington Railway and Electric Company), and was, on the day of his death, July 28, 1901, in one of the "plow pits" located on the lines of the company near its terminus at Thirty-sixth street and Prospect avenue northwest.

The Metropolitan Company's line connects at this point with that of the Great Falls line. The

latter company uses the overhead system. By this system the power is conveyed to the car by means of a "trolley pole" attached to the top of the car and made to touch the trolley wire when used to propel the car. The Metropolitan Company uses the underground system by means of a "plow," so called, projecting through a slot in the tracks to an underground current. The two companies have a trackage arrangement, whereby the cars of the Metropolitan Company run over the line of the other company. The cars of the Metropolitan Company, therefore, are equipped not only with a "plow" and mechanism for the underground system, but with a trolley pole and mechanism for an overhead system. To attach these mechanisms to their respective systems it is necessary to run a car over an excavation on the line of the Great Falls Company known as the "pit." The "pitman" is thus enabled to remove the "plow" from a car to be transferred from the Metropolitan line to the Great Falls line, and adjust or attach the wires or "leads" necessary for the operation of the car over the Great Falls line. While doing this Looney was killed, the plaintiff contends, through the negligence of the conductor of the car in permitting the trolley pole to come in contact with the trolley wire, whereby a current of electricity was transmitted to the motive machinery. And this is the ground of negligence charged in the declaration. In every count it is alleged "before said intestate entered said plow pit it became the duty of the defendants, and each of them, to keep, or cause to be kept, the electric current so cut off from said pit as not to injure the said intestate; and the plaintiff says that said intestate having entered said pit in obedience to said direction to him as aforesaid, said defendants negligently failed to keep, or cause to be kept, cut off, as aforesaid, said electric current from said pit while said intestate was therein for the purpose aforesaid, whereby and by reason of said negligence the said intestate was so severely shocked and injured by said electric current that he almost immediately died."

At the trial there was evidence given by the plaintiff of the arrangement between the defendant companies as to the exchange of cars and to the relation of their respective employees. On this evidence the parties base opposing contentions, the defendants contending that the conductor and Looney were fellow servants, the plaintiff contending that they were not. Both of the lower courts sustained the contention of the defendants. The Court of Appeals beside intimated a belief that testimony on behalf of plaintiff rather tended to show accident than negligence. If this be so, or if the evidence fails to establish whether the death was caused by accident or negligence the judgment should be affirmed, and it will be unnecessary to decide whether Looney and the conductor were fellow servants. We will assume for the purposes of the case that they were not fellow servants.

The accident was seen by two persons, Margaret Mawson and Helen Gertrude Coon. The former testified that she was sitting in her room on the second floor of her house, which is on Prospect avenue, 75 feet or more from the "pit." She saw the car turn the curve from

Thirty-sixth street into Prospect avenue, and "that the trolley pole was up and the trolley wheel against the overhead wire, all the time after the car got into Prospect avenue until it stopped over the pit; that while the car was coming from Thirty-sixth street down to the pit she saw Looney, the deceased, enter the pit through the south trap-door. That after the car stopped over the pit she saw him go up under the car and take the plow off. That after he took the plow off she saw him go up under the car again and put the wires up in the car to connect with the overhead trolley, and that while he was in that position she heard him holler and drop down, and the motorman turned and said, 'For God's sake, fix that trolley!' and the conductor then pulled the trolley down, but did not before that time. . . . That the accident did not happen until after the car stopped and the deceased had removed the plow and had gone up under the car again and was putting up the wires. That she saw the movements of the deceased under the car through the trap-door. That she could see his hands taking off the plow; could see nothing but his hands then; that after he took off the plow and went up under the car, she could see a part of his body above the surface of the street. That the pit was deep enough for a man to stand up in; that she heard no bell ring, nor signal of any sort; her hearing was good enough to hear a bell if one had been rung. That he had to use his hands to remove the plow and also put the overhead current on, and she saw him twist his hands when he got the shock."

Helen Gertrude Ooon testified that she was a daughter of the preceding witness and lived with her; that she saw the accident from the front porch of the house, which was about on the level with the sidewalk of Prospect avenue. She saw the car run around the curve from Thirty-sixth street, come down the avenue and stop over the pit. She was not certain whether the pole was touching the wire before the car stopped over the pit, but the pole was touching the wire or came in contact with it while deceased was taking off the plow. "That her attention was directed to the fact of the trolley being in contact with the wire from the fact that the deceased gave a groan, and the motorman said, 'For God sake, pull that trolley down!' That some one said, 'Pull the car off the pit!' That she saw deceased take the plow off and then go up under the car to throw the overhead current on. That after he took the plow off and was putting the overhead current on, she heard him groan. That she heard no bells or signals given. That he had to use his hands to remove the plow and also put the overhead current on, and she saw him twist his hands when he got the shock. That she saw all this while looking under the car from where she was sitting on the porch. That they took the body up out of the pit over which the car had been standing."

A passenger on the car testified that he heard one bell ring, and immediately the conductor took the rope that holds the trolley rod in his hands, but he did not notice him do anything else. In about a minute and a half there was a groan down in the hole and he jumped down and saw the man lying on his face. He heard

some one say, "For God's sake, hold the rod down; pull the pole down!"

Another witness testified that he lived on Prospect avenue, and was in front of his house, lighting the fire in his automobile. He did not notice the car before it stopped. While it was standing over the pit he heard an exclamation and a groan, and some one said, "Pull that trolley down!" After the exclamation he looked up and saw the trolley against the wire. He was about 75 feet from the car.

Another witness testified as to the manner of adjusting the plow and "leads," and the way a shock could be received by the pitman. It was to the effect that the wires used to connect the motive power with the overhead trolley are called "leads." Where the pitman takes hold of them to adjust them they are insulated by a covering of india rubber; but at the ends where they connect with other wires they are uninsulated, and have to be so in order to take the current. If the pitman takes hold of them at the right place and there is no leak, he would not be shocked, even though they were connected with the trolley. "Wear and tear," a witness said who was experienced in removing and adjusting plows and wires, "will cause a leak in the insulation. A leak is when the electricity comes through a hole in the insulation, caused by the wear and tear or from the insulation being old or imperfect."

The same witness also testified "that the company furnishes gloves in the pit with which to handle live plows and wires. But it is not customary or required to use the gloves except upon rainy days. On bright days, the car, when over the pit, is supposed to be 'dead,' and you don't take off the plows with gloves; you can't half do your work with them. That danger from electricity is increased from perspiration, rain, or other moisture. That the day of the accident was a bright, sunshiny day. The accident occurred between 2 and 4 o'clock p. m."

If the trolley was on before the plow was disconnected and removed, the plow would be charged with the full voltage on the line.

A witness who had experience with the construction of electric railway systems, and was familiar with the action of electricity generally, and had experience in superintending the work of disconnecting a plow from an electric car and adjusting the wires to move an overhead system, testified that, in his opinion as an expert, it would be the duty of a conductor to keep the trolley off the wire until he received some signal from the man beneath the car.

(1) It will be observed that the deceased did not meet his death while removing the plow. Of this the testimony leaves no doubt. (2) He received the electric shock while adjusting the leads. It follows from the first proposition that the trolley pole was not in contact with the trolley wire when the plow was removed. The argument of plaintiff assumes the contrary and, indeed, is based entirely on the assumption that the deceased received his death stroke when removing the plow.

Two questions arise on the second proposition. The leads are insulated except at the ends that go into the connection; they are necessarily uninsulated there in order to take the current. But it was not necessary for the de-

ceased to touch the uninsulated parts in making the connection, and, unless touched, no shock would have been received, even though they had been connected with the current by reason of the trolley being in contact with the wire, *unless there was a leak in the insulation arising from defective construction or wear and tear in use*. Granting, therefore, that the conductor was negligent, one of two things was necessary to cause the accident—a leak in the insulation or the act of the deceased in touching the uninsulated ends of the leads. Either one or the other was a necessary condition. If the first existed, the defendants may be charged with liability. If the second, they are exonerated. The burden of proof becomes a factor. The plaintiff in the first instance is not required to prove that the deceased was free from contributory negligence; in other words, the burden of proof of contributory negligence is on the defendant. But, on the other hand, plaintiff must establish grounds of liability against the defendant. To hold a master responsible, a servant must show that the appliances and instrumentalities furnished were defective. A defect can not be inferred from the mere fact of an injury. There must be some substantive proof of the negligence. Knowledge of the defect or some omission of duty in regard to it must be shown.

In *Texas P. R. Co. v. Barrett*, 166 U. S., 617, 41 L. ed. 1136, 17 Sup. Ct. Rep. 707, the plaintiff (defendant in error in this court) was a foreman in charge of a switch engine, and was injured by the explosion of a boiler of another engine. There was evidence tending to prove that the boiler was and had been in a weak and unsafe state by reason of the condition of the stay bolts, and that if a well-known test had been applied the condition of the bolts would have been discovered. The circuit court instructed the jury that the mere fact of the injury received from the explosion would not entitle plaintiff to recover; that, besides the fact of explosion, he must show that the explosion resulted from the failure of the railroad company to exercise ordinary care either in selecting the engine or in keeping it in reasonable safe repair. The court also instructed the jury that the burden of proof was on the plaintiff throughout the case to show that the boilers and engines that exploded were improper appliances to be used on its railroad by the defendant; that by reason of the particular defects pointed out and insisted on by the plaintiff the boiler exploded and injured him, and the plaintiff was ignorant of the defects, and did not by his negligence contribute to his injury. Passing on these instructions, this court said, that they laid down the applicable rule with sufficient accuracy and in substantial conformity with the views of this court expressed in prior cases which were cited.

Plaintiff in the case at bar introduced no evidence whatever of a defect in the leads or that leaks were likely to occur, or the amount or degree of inspection necessary to discover them, or that there was an omission of inspection. The case was probably brought and tried on a different theory. It was argued in this court on a different theory. It was argued on the assumption that the deceased was killed when removing the plow. The assumption is directly

in the teeth of the testimony. "The accident did not happen until after the car stopped and the deceased had removed the plow and had gone up under the car again and was putting up the wires." (Testimony of Margaret Mawson.) And to like effect is the testimony of Miss Coon. "She saw deceased take the plow off and then go up under the car to throw the overhead current on. That after he took the plow off and was putting the overhead current on, she heard him groan." And she saw him "twist his hands when he got the shock."

The declaration does not charge a defect in the leads. It charges the negligence to have been in the failure "to keep, or cause to be kept, cut off" the electric current while the deceased was in the pit, "whereby and by reason of said negligence the said intestate was so severely shocked and injured by said electric current that he almost immediately died." In other words, the cause of death was the negligent act of permitting the trolley pole to come in contact with the trolley wire.

But granting plaintiff is not limited by her declaration, nevertheless she has not satisfied the requirements of law in her proof. A plaintiff in the first instance must show negligence on the part of the defendant. Having done this, he need not go farther in those jurisdictions where the burden of proof is on the defendant to show contributory negligence. In other words, if there is no evidence which speaks one way or the other with reference to contributory negligence of the person killed, then it is presumed that there was no such negligence. *Thompson on the Law of Negligence*, sec. 401; *Baltimore and Potomac Railway Company v. Landrigap*, 191 U. S. 461; *Texas & Pacific Railway Company v. Gentry*, 163 U. S., 353. But the negligence of a defendant can not be inferred from a presumption of care on the part of the person killed. A presumption in the performance of duty attends the defendant as well as the person killed. It must be overcome by direct evidence. One presumption can not be built upon another. *Douglas v. Mitchell*, 35 Pa. St., 440; *Philadelphia, etc., Railroad Company v. Henric*, 92 Pa. St., 431; *Yarnell v. Kansas City, etc., Railroad Company*, 113 Mo., 570.

Judgment affirmed.

#### ACTIONS FOR INJURIES FROM FRIGHT.

[Case and Comment.]

Timidity and weakness have been conspicuously exhibited by the courts in the treatment of cases in which recovery has been sought for injuries resulting from fright. The established principles of the law unmistakably sustain a right of action for physical injuries resulting from negligence or other tort, none the less clearly because those physical injuries consist of a wrecked nervous system than if they consist of broken bones. Injuries of the former class are often greater beyond all comparison than those of the latter. To deny recovery against one whose wilful or negligent tort has so terribly frightened a person as to cause his death, or leave him through life a suffering and helpless wreck, and permit a recovery for exactly the same wrong which results, instead, in a broken finger, is a travesty upon justice.

The reasoning which can lead to such a result must be cogent indeed if it shall be entitled to respect.

All the decisions are agreed that mere fright which does not result in any traceable injuries to the physical system does not constitute in itself the basis of a cause of action. These cases may reasonably stand on the theory that there is no damage sufficient to require a remedy. On the other hand, all the cases agree that for a wilful tort the wrongdoer may be held responsible for such physical injuries as may result from a fright that his wrong has caused. Yet, at the same time, most of the courts have denied recovery in exactly the same class of cases if the wrongdoer was merely negligent, and not wilful. Nevertheless, some, if not all, of the reasons for sustaining such actions for fright caused by wilful tort apply to those for fright caused by negligence.

There are three somewhat clearly defined theories on which the various courts have based their decisions against recovery for physical injuries due to fright which was caused by negligence. The first of these is that, inasmuch as there is no right of action for fright alone, there can not be any for the consequences of fright. This is stated as if it were a matter of course in *Mitchell v. Rochester R. Co.*, 151 N. Y., 107, 34 L. R. A., 781, 56 Am. St. Rep., 604, 45 N. E., 354, where the court says: "Assuming that fright can not form the basis of an action, it is obvious that no recovery can be had for injuries resulting therefrom. That the result may be nervous disease, blindness, insanity, or even a miscarriage, in no way changes the principle. These results merely show the degree of fright, or the extent of the damages." But the only sound reason why a right of action can not be had for fright alone is the lack of any very real damage, so that when there are added to the mere unpleasantness of being frightened serious physical injuries of the greatest magnitude, to say that there can be no recovery for these because there could be none for the mere sensation of being frightened does not seem to be an obvious conclusion. This is entirely to misconceive the situation, and treat the fright, which is but a link in the chain of causation, as the foundation of the cause of action, and regard the physical injury, which is the real basis of the action, merely as evidence of the degree of the fright. The remedy sought is for the injury sustained; and, where serious impairment of health and strength, and possibly a complete wrecking of the nervous system, has resulted, this is the injury for which action is brought. These injuries are not an incident of the fright, though the fright may be an incident of the injuries. Clear and cogent reasoning on the subject appears in the opinion of Kennedy, J., in the English case of *Dulieu v. White* (1901), 2 K. B., 669, where, in discussing the theory which denies an action for the results of fright because there can be none for fright alone, he says: "With all respect to the learned judges who have so held, I feel a difficulty in following this reasoning;" pointing out that damage is an essential element in a right of action for negligence, and that an action may not be based on fright if it is "only an unpleasant emotion of more or less transient duration."

He concludes that, if "the fear is proved to have naturally and directly produced physical effects, so that the ill results of the negligence which caused the fear are as measurable in damages as the same result would be if they arose from an actual impact, why should not an action for those damages lie just as well as it lies where there has been an actual impact?" He also says that "direct bodily impact is, without resulting damage, as insufficient a ground of legal claim as the infliction of fright." There is as much reason in saying that, since there can be no cause of action based on mere bodily impact, there can be none for the serious damages which may result from the impact, as there is in saying that, since there can be no damages for mere fright, there can be none for the physical consequences of the fright. To say either is very strangely to misconceive the relation of the element of fright or impact which is a mere incident in the occurrence to the real injuries which constitute the basis of the action.

Another theory often advanced by the courts is that the damages to the physical system caused by fright are too remote to constitute the basis of an action for causing the fright. But, with all deference for the learned judges who have advanced this argument, it deserves little respect. Every man of ordinary intelligence knows, either from his own personal experience, or from the observations of every-day life, that fright is one of the most potent causes of serious physical injuries. The court might well take judicial notice as a matter of common knowledge, as Thompson well declares in his work on Negligence, vol. 1, sec. 156, that such an injury as miscarriage is likely to result from a severe fright or nervous shock, yet case after case has been decided in respect to this very case of miscarriage, denying that it was a proximate result of the negligence which caused the fright. There seems to be an assumption in this reasoning that the fright, instead of being a mere incident or link in the chain of causation, is an intervening and independent cause which breaks the chain. To state the assumption in words sufficiently answers it. No court will deny that the proximate cause of a disaster may operate through successive instruments. The question is, was there an unbroken connection or continuous operation between the wrongful act and the injury? It is decided, and no court would decide otherwise, that a man who frightens a horse, causing a runaway, is liable for injury to person or property, done by the horse as a result. The fright of the horse is not held to be an independent, intervening cause between the wrongdoer's act and the injury sustained. Yet, absurdly enough, some of the courts hold that fright is such an intervening, independent cause when the fright is not that of a horse, but that of the very person injured.

A third reason for denying recovery in these actions for physical injuries caused by fright is that of expediency or public policy because of the danger of fictitious or speculative claims, if it be admitted that any such cause of action can be entertained. It ought to be humiliating to any court to deny a clear case of justice for fear that some one might bring action for an unjust claim. If it is conceivable, however, that the dangers



to the public might be so great that even a just cause of action should be rejected, all will agree that this should be done with great hesitation. It ought not to be necessary to urge upon the courts that justice is the highest consideration, in their department of government at least. To leave a palpable and serious wrong unremedied solely because of the fear that some evil-minded person may in some other case impose upon the court is a confession of the breaking down of the system of justice. In this matter no such confession seems to be necessary. Every day the courts are sustaining claims of identically the same nature as those which they reject. Not only do they, without a dissenting voice, sustain actions for injuries resulting from fright where the wrongdoer was not merely negligent, but wilful, but, even as against negligent wrongdoers, they are constantly sustaining recoveries for injuries resulting from fright, if there is something, however infinitesimal, in the nature of bodily impact which can be seized upon as a peg on which to hang the substantial recovery for the results of fright. A wagon is struck by a car and pushed along a little distance, and this is held to constitute such an actual injury to the person of an occupant of the wagon, though his person was not in fact touched, as to give him a right to recover for the injuries which he sustained from fright. A woman at a railroad station throws herself down on the platform to escape a projecting timber on a passing train, and though not hurt in the slightest by the act, the court on that peg hangs her right to damages for a nervous shock from her fright because she had been compelled to throw herself upon the platform. A person jumps from a wagon to escape harm, and, though not hurt by the jumping, is, because of that act, allowed to recover for the nervous shock caused by the fright. A railroad passenger in a collision is jarred against the seat, and, though not hurt by that, recovers damages for the nervous shock. A slight blow on the temple by an incandescent light globe, though amounting to nothing in itself, is made the peg on which to allow a recovery of damages for a miscarriage resulting from the fright and shock which were received at the same time. So the courts go on, notwithstanding all their fear of fake actions on fictitious claims, allowing recoveries for these injuries resulting from fright whenever there is a minute peg on which, as a fiction, they can base their decision, but denying any justice in exactly the same class of cases where the fiction is wanting. The danger from fictitious claims is as great in the one class of cases as the other. It is not creditable to the courts to base their decisions on unimportant accidents or incidents of the transaction instead of the real and substantial justice of the case.

It is unfortunate that the courts began to pass upon questions of this kind without due consideration, and so created precedents which have in many later cases prevented those judges who would otherwise have grasped the question with clear reason and sound judgment from dealing with the subject as they would have done if they had not felt themselves bound by prior decisions. Bad precedents are troublesome things, and it must be confessed that in a good number of jurisdictions they are

strongly against the reason and right of this subject. But it is time for the courts to disentangle themselves from the bad reasoning which in the early cases led to bad precedents, which will stand in the way until overruled. But the principles governing the matter stand out plain, simple, and clear. A physical injury due to fright is none the less a physical injury than if it resulted from impact. Neither the impact nor the fright can itself create a cause of action without damage. Neither the impact nor the fright is itself an intervening and independent cause between the wrongful act and the damage done. The physical injuries which come directly from a wrongful act, whether it is through the medium of bodily impact and resulting changes in the physical condition, or by fright with resulting change and impairment of the physical condition, constitute the basis of a cause of action against the wrongdoer who produced the injury. The fear of fictitious actions of this kind is lost sight of by those inconsistent courts which adopt a fiction whenever possible on which to allow identically the same causes of action which they reject if they can not find a fiction to interpose. Besides, at the present day, the proof of physical injuries resulting from fright is not much more difficult or uncertain than the physical injuries resulting from bodily impact. Indeed, a great number of the cases of the latter kind which the courts sustain are in every sense and to the fullest extent as uncertain of proof as those which result from fright. For the credit of jurisprudence it is time for the courts to apply the established principles of justice to cases of this kind as fully as to cases of any other kind.

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**Obstruction in Streets—Negligence—Proximate Cause of Injury.**

In *Louisville Home Telephone Co. v. Gasper*, decided by the Court of Appeals of Kentucky, in June, 1906 (93 S. W., 1057), it was held that where one drove negligently at a rapid rate along a public alley and ran upon a guy wire negligently anchored by a telephone company in the alley, overturning the vehicle and causing personal injuries to the plaintiff, the fact that the negligence of the driver intervened between that of the telephone company and the injury to plaintiff does not prevent the telephone company from becoming liable therefor. The court said in part:

"Manifestly, the injury complained of by appellee would not have been inflicted, but for the negligence of the driver of the wagon, but this is not truer than the further fact that the accident would not have occurred, notwithstanding the negligence of the driver, had not the original or primary negligence of appellant operated to bring it about. In other words, appellee was injured by the immediate negligence of the driver of the wagon, and the primary negligence of appellant; the negligence of the two concurring to cause it, and the injury being such as the maintainer of the dangerous obstruction in the alley ought to have anticipated, as likely to occur from its existence.

"Whoever does a wrongful act is answerable for all the consequences that may ensue in the ordinary and natural course of events,

though such consequences be immediately and directly brought about by intervening causes, if such intervening causes were set in motion by the original wrongdoer." Thompson on Negligence, sec. 52. "Proximate cause" has been variously defined by different law writers and judges, but perhaps a better definition can not be found than that given by Thompson in section 47 of the work, supra: "The proximate cause of an injury is that which in natural and continuous sequences, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred." In Black's Law and Practice (section 21) "proximate cause" is thus defined: "A proximate cause is that cause which naturally led to and which might have been expected to produce the result. . . . The connection of cause and effect must be established. It is also a principle well settled, that when an injury is caused by two causes concurring to produce the result, for one of which the defendant is responsible, and not for the other, the defendant can not escape responsibility. One is liable for an injury caused by the concurring negligence of himself and another to the same extent as if for one caused entirely by his own negligence." Whitaker's Smith on Negligence, p. 27. The rule announced by the foregoing authorities has been approved by this court; notably in the case of *Whiteman & Co. v. Warren* (66 S. W., 609, 23 Ky. Law Rep., 2120). In that case the defendant had left a gutter filled with hot water. A boy traveling the walkway was pushed by another boy into the gutter and hot water and thereby scalded and badly injured. In the opinion, it is said: "If it be true that the injury was the result of the negligence of two persons, appellant (in leaving the gutter filled with hot water), and the boy who jostled appellee, there might still be a recovery against either without joining the other."

In order to hold appellant liable it is not necessary to show that it could or should have foreseen the result. In addition to establishing its negligence in maintaining the dangerous obstruction in the alley, it was only required of appellee to show that the injury to him was the natural, though not the necessary, result of its presence. *Wharton on Negligence*, sec. 74; *Shearman and Redfield on Negligence*, secs. 32-38; *Thompson on Negligence*, sec. 59; *Milwaukee Ry. v. Kellogg*, 94 U. S., 469, 24 L. Ed., 256. To illustrate: Horses frightened in a street or on a highway are liable to run away and inflict injury upon persons or property. So, if the whistle of a locomotive engine be needlessly and wantonly sounded in or near a street or highway and causes a team of horses to run away and kill another horse, the owner thereof may recover damages therefor of the railroad company. *Billman v. Indianapolis R. R.*, 76 Ind., 166, 40 Am. Rep., 230. We do not think the views herein expressed in conflict with *Setter's Admr. v. City of Maysville*, 69 S. W., 1074, 24 Ky. Law Rep., 828, relied on by appellant. In that case damages were sought to be recovered of the city of Maysville for the death of the intestate, caused by being run over by an electric car while walking on one of its streets; the charge being that by the negligence of the city in allowing brick and other de-

bris in the street between the track of the railway company and the north side of the street, and in permitting the street railway company to maintain trolley poles along its track and a grade one or two feet higher than the portion of the street on the north side, without erecting barricades between the street and the trolley track, the vision of pedestrians traveling on the northsidewas obstructed, and they were forced to travel in a narrow path between the debris and railway track, and that the intestate was killed by a street-car while traveling this path, it being alleged that the negligence of the city in allowing the obstructions along and on the street was the proximate cause of her death. The court, though not disputing the doctrine we have announced, held that the city was not liable on the facts presented, and this decision, we think, was due, as intimated in the opinion, to the fact that it was not alleged or proved by the plaintiff that on the south side of the railway track, which was opposite the path traveled by the intestate, the road was in any wise obstructed, or that the sidewalk on Second street was not in a suitable condition for the use of the public, from which it might be inferred that the intestate could have walked on the south side of the railway track in safety. Therefore, no negligence was shown as against the city which could have been the proximate cause of the injury. While other authorities have been cited by appellant's counsel, we do not find that they are based upon facts analogous to those of this case, and, therefore, we do not regard them with such favor as to accept them as against those relied on in the opinion.

—♦♦♦—  
Carriers—Passengers—Personal Injuries—Negligence  
—Proximate Cause.

In *Snyder v. Colorado Springs & C. O. D. R'y*, decided by the Supreme Court of Colorado in March, 1906 (85 Pac., 686), it appeared that a passenger on a crowded car stood near the door with his hand resting on the door jamb. There were people between him and the door and some on the steps. The conductor in pushing his way through the crowd pressed the passenger against a third person sitting in a seat who gave the passenger a push, throwing him from the car. It was held that the proximate cause of the injury was, as a matter of law, the action of the third person, for which the carrier was not liable. The court said in part:

"There is no dispute as to the facts, which appear to be that on the night of December 20, 1900, plaintiff was a passenger on defendant's car, going from Cripple Creek to Midway. He had paid his fare, the car was crowded, and, after leaving Fairview, plaintiff was standing near the door with his hand resting on the door jamb. There were people between plaintiff and the door, some upon the steps. The head of the man upon the lower step reached to about the thigh of the plaintiff. The conductor, in pushing his way through the crowd, pressed plaintiff against a party who was sitting in a seat on the side of the car. This man became angry, said that he was 'getting tired of playing cushion for the electric line,' and raised up against the

plaintiff and gave a 'surge' by the force of which plaintiff was thrown from the car, passing over the head of the man who stood upon the lower step. In plaintiff's brief it is said, in effect, that the court below in passing on the motion for non-suit dwelt at considerable length upon the question as to what was the proximate cause of this accident. The court came to the conclusion that the proximate cause was the action of the passenger, and therefore the company was not liable. So the question for us to determine is as to what was the proximate cause of the accident.

"Proximate cause is: 'That cause which, in natural and continued sequence, unbroken by any efficient intervening cause, produced the result complained of, and without which that result would not have occurred.' D. & R. G. R. v. Sipes, 26 Colo., 17, 55 Pac., 1093. It was defined by the Court of Appeals as being 'that cause which immediately precedes and directly produces an effect as distinguished from a remote, mediate, or predisposing cause.' Burlington, etc., R. R. v. Budin, 6 Colo. App., 275, 40 Pac., 503. 'An act is the proximate cause of an event, when, in the natural order of things, and under the particular circumstances surrounding it, such an act would necessarily produce that event.' Id. 'The law will not look back from the injurious consequence, beyond the last sufficient cause, and especially that where an intelligent and responsible human being has intervened between the original cause and the resulting damage.' Stone v. Boston & A. R. Co. (Mass.), 51 N. E., 1, 41 L. R. A., 794. 'The nature of the intervening cause which will render an original cause for which the author is sought to be held liable in damages too remote for recovery, must be simply such as interrupts the usual and ordinary and experienced sequence of events, and produces consequences at variance therewith.' Watson on Damages for Personal Injuries, sec. 7. 'If the original wrong only becomes injurious in consequence of the intervention of some distinct wrongful act or omission by another, the injury shall be imputed to the last wrong as the proximate cause, and not to that which was more remote.' Cooley on Torts, sec. 70. 'The injury must be the direct result of the misconduct charged; but it will not be considered too remote if, according to the usual experience of mankind, the result ought to have been apprehended. The act of a third person, intervening or contributing a condition necessary to the injurious effect of the original negligence, will not excuse the first wrongdoer, if such act ought to have been foreseen.' Lane v. Atlantic Works, 111 Mass., 136. 'One is bound to anticipate and provide against what usually happens, and what is likely to happen; but it would impose too heavy a responsibility to hold him bound in like manner to guard against what is unusual and unlikely to happen, or what, as it is sometimes said, is only remotely and slightly probable.' Stone v. Boston & A. R. Co., supra; Burlington &c., R. R. v. Budin, supra.

"Tried by these tests, the defendant is not responsible for the consequences of the passenger's act. There is nothing to show that such a consequence as happened was liable to occur.

It was, of course, possible that some extremely nervous or irritable person would become angry because of his being inconvenienced on account of the crowded condition of the car; but it is not in accordance with the usual and ordinary course of events to anticipate that a seated passenger would so far lose control of himself on account of having a standing passenger crowded against him that he would eject the standing passenger from the car with such force as to throw him over the head of one who was standing upon the step below the party so ejected. It is apparent from the record in this case that the proximate cause of the injury to plaintiff was the action of the irritated passenger, and that this cause could not be anticipated by defendant or its agents."

—♦—

**Landlord's Right to Recover for Injury to Use and Occupation by Temporary Nuisance.**  
[Case and Comment].

The New York Court of Appeals has evolved a doctrine which not only works great hardship upon the owners of property which is in possession of tenants during the time of the maintenance of a temporary nuisance in the neighborhood, but which seems needless and devoid of justice. A company organized for the generation of electricity operated its plant in such a way as to constitute a nuisance to property in the neighborhood. At the time of the creation of the nuisance the property was in possession of a tenant. When the lease expired it was renewed at a rental considerably less in amount than the landlord had previously been able to secure, and the court found that the diminished rental value was due very largely to the existence of the nuisance. The tenant brought an action for the injury to his use and occupation, and recovered in the case of Bly v. Edison Electric Illuminating Co. (N. Y.), 58 L. R. A., 500. Subsequently the landlord brought an action for injury to the rental value of his property, and the court denied him the right to recover on the theory that the right to recover for injury to the use and occupation had been settled, in the Bly Case, to belong to the tenant. Miller v. Edison Electric Illuminating Co. (N. Y.), 3 L. R. A. (N. S.), —. The practical result of this decision would seem to be to render the person responsible for the nuisance immune from liability for injury to the rental value. Certainly, if the tenant has secured a reduction of the rent because of the existence of the nuisance he can not prove damages for injury to rental value to that extent, because, having been released from payment of the full rental, he can not be held to have been injured. Upon the other hand, the direct loss has fallen on the landlord, and, if he is not able to recover, he will have to bear his loss and the wrongdoer go unscathed. That such a result is unjust seems self-evident, and it would seem that the result is attained through an erroneous view of the method by which the landlord's damages might be measured. The court seems to assume that the damage to the landlord is fixed at the time of the renewal of the lease at the diminished rental, and that the measure of damage would be the difference between the old and new rental for the period of the

lease. This view would seem to be erroneous. As stated in the note to the Miller Case, in 3 L. R. A. (N. S.), —, it would seem that, in a true view, the measure of damages recoverable by the owner of premises, from a nuisance not of a permanent character, affecting the rental value of the property, would be the same whether he rents the premises after the creation of the nuisance or retains possession of them himself; and that the measure in either case would be the depreciation in the rental value caused by the nuisance for the time it actually continued. The terms of the new contract would not necessarily fix his damages, but would be merely evidence thereof, and he could recover the damage which he could prove only as long as the nuisance existed. Any injury by the extension of the lease beyond the termination of the nuisance could not be said to be due to the existence of the nuisance, but to the improvidence of the landlord in making a lease without providing for such termination. In this view, the danger that the creator of the nuisance might be subjected to a liability for a period beyond the continuance of the nuisance would disappear, and with it the only apparent substantial objection to the landlord's recovery. This view of the subject would afford the owner of premises affected by a nuisance not of a permanent character a practical means of protecting himself from ultimate loss by reason of the nuisance in case he desired to lease the premises, since he could agree with the tenant upon the rental value of the premises independently of the nuisance and then provide for a proper reduction from that rental for such time as the nuisance should exist, ultimately recouping himself by the recovery of damages for such period from the person responsible for the nuisance. As suggested in the note, under the practical operation of the doctrine of the Miller case it would seem that the owner of premises affected by a nuisance not of a permanent character, in order to protect himself from ultimate loss, must either find a tenant who is willing to pay the full rental value of the premises independently of the nuisance and take his chance of recovering damages from the creator thereof, or, if the rent is reduced on account of the nuisance, the owner must enter into some arrangement or understanding with the tenant whereby the latter shall maintain an action for his benefit, and such an arrangement would smack of champerty.

**Referee in Bankruptcy—Ruling Upon Evidence—Certifying Questions.**—The Circuit Court of Appeals, Fourth Circuit, has held, in *Bank of Ravenswood v. Johnson*, 16 Am. B. R., 206, that under General Order XXII, which has the force of the statute under which it is promulgated, a referee in bankruptcy, whether acting as such or as special commissioner, must receive all the evidence offered upon a hearing before him noting the objections made thereto as required by said general order, and he may refuse to stop the proceedings and certify questions raised on objections to testimony. The power to punish a witness as for contempt in refusing to testify or produce books is vested under section 41b in the district judge, not the referee, whose duty it is to certify the facts.

**Discharge in Bankruptcy—Partnership Only Objecting Creditor—Effect of Dissolution.**—Where a partnership, the only creditor objecting to a bankrupt's discharge, is dissolved and the claim proven by it against the bankrupt estate is charged off to profit and loss, it has been held in *re Hendrick*, 16 Am. B. R., 218, that one of the individual partners insisting upon the objections filed is bound to show affirmatively that he is acting in accordance with the wishes of all the joint owners of the claim and that in the absence of such proof the bankrupt's exceptions to the report of a special master recommending that his discharge be denied, upon the ground that it should have been reported that there were no specifications of objection to the granting of the discharge filed by any creditor or any person having an interest in the bankrupt estate, will be sustained.

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#### ADDITIONAL LECTURERS IN THE FOURTH YEAR OR POST-GRADUATE COURSE.

HON. HOLMES CONRAD,  
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On the History of the Development of Law and Comparative Jurisprudence and on the History of the English Law.

HON. SETH SHEPARD, LL. D.,  
(Chief Justice, Court of Appeals of the District of  
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On the History of Constitutional Law and the Founda-  
tions of Civil Liberty.

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GEORGE E. HAMILTON, LL. D.,

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HON. D. W. BAKER, A. M., LL. M.,

(United States Attorney for the District of Columbia)

On General Practice and Exercises in Pleading and  
Evidence.

FREDERICK VAN DYNE, LL. M.,

(Assistant Solicitor, State Department)

On Citizenship.

The thirty-seventh annual session opens on Wednes-  
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any order of court, shall be published in THE WASHINGTON  
LAW REPORTER, during the time required by law. In ad-  
dition to any other papers which may be specially ordered or  
which may be selected by the parties.

## Legal Notices.

### FIRST INSERTION.

Leon Tobriner, Attorney

In the Supreme Court of the District of Columbia.

Mary Maguire v. Thomas Diggins et al.

No. 24,585. Equity.

Samuel Maddox, Francis H. Stephens, and Leon To-  
briner having reported the sale to Dorothy M. Brown of  
lot numbered fifteen (15), in Samuel Davidson's sub-  
division of lots in square one hundred and ninety-eight  
(198), as per plat recorded in liber N. K., folios 29 and 30,  
of the records of the office of the surveyor of the District  
of Columbia, being the west twenty-four (24) feet four  
and one-half (4½) inches by the full depth thereof of said  
lot fifteen (15), in the City of Washington, District of Co-  
lumbia, for the sum of two and thirty-eight hundredths  
dollars (\$2.38) per square foot, aggregating the sum of  
seven thousand three hundred and eleven and thirty-six  
hundredths dollars (\$7,311.36), it is, this 14th day of  
September, A. D. 1906, ordered that the said sale be and  
it is finally ratified and confirmed unless cause to the  
contrary be shown on or before the 15th day of Octo-  
ber, A. D. 1906. Provided a copy of this order be pub-  
lished once a week for three successive weeks before said  
last mentioned day in The Washington Law Reporter  
and The Washington Post. By the Court: ASHLEY M.  
GOULD, Justice. True copy. Test: J. R. Young, Clerk,  
by J. W. Latimer, Asst. Clerk. 88-3t

Levi H. David, Solicitor

In the Supreme Court of the District of Columbia.

Camille Jacobs et al., Complainants, v. Irving Jacobs,  
Defendant. Doc. No. 58. Eq. No. 24,475.

The object of this suit is to obtain the partition, by  
sale, among the parties to this cause, of the equities of  
the following-described parcels of real estate in the Dis-  
trict of Columbia: The west 4 ft. of lot 6 and the east 14  
ft. front of lot 7 by full depth, in block 34, Columbia  
Heights; also the 16 and 79-100 ft. front on 14th st. ex-  
tended, next north of the south 16 and 79-100 ft. of lot 14,  
in block 38, Columbia Heights, by a depth of 187 ft.; also  
part lot 4, in block 22, John Sherman Trustee's subdi-  
vision, known as Columbia Heights, as per plat rec.  
in surveyor's office, D. C., liber Governor Shepherd, folio  
187. The marshal having returned the subpoena against  
said defendant "not to be found," and it having been  
proven by affidavit filed herein to the satisfaction of the  
court that said defendant is a non-resident of the Dis-  
trict of Columbia, on motion of complainants, by their  
solicitor, it is, by the court, this 21st day of September,  
1906, ordered that the defendant, Irving Jacobs, cause  
his appearance to be entered herein on or before the  
fortieth day, exclusive of Sundays and legal holidays,  
occurring after the day of the first publication of this  
order; otherwise this cause will be proceeded with as in  
case of default. Provided a copy of this order be pub-  
lished once a week for three successive weeks in The  
Washington Law Reporter and The Washing-  
ton Times before said day. HARRY M. CLA-  
BAUGH, Chief Justice. True copy. Test: J. R.  
Young, Clerk, by J. W. Latimer, Asst. Clerk. 88-3t

[Filed July 20, 1906. J. R. Young, Clerk.]

W. E. Poulton, Jr., Solicitor

In the Supreme Court of the District of Columbia.

Cotter T. Bride v. The Unknown Heirs, Devisees, and  
Alliances of James Neale, "of Bennet," Deceased.

Equity No. 23,148. Doc. No. 58.

On motion of complainant, it is, this 20th day of July,  
A. D. 1906, ordered that the defendants, the unknown  
heirs, devisees, and alliances of James Neale,  
"of Bennet," deceased, cause their appearance to be  
entered herein, on or before the first rule day, occurring  
three (3) months after the day of the first publication of  
this order; otherwise this cause will be proceeded with  
as in case of default. The object of this suit is to declare  
the title of complainant to lot numbered two (2) in  
square numbered five hundred and ninety-nine (599), in  
the city of Washington, in the District of Columbia, to  
be good in fee simple by adverse possession.

[Seal] By the court: ASHLEY M. GOULD, Justice.  
A true copy. Test: J. R. Young, Clerk, by  
Wms. F. Lemon, Asst. Clerk. 88-3t

This office and store opens at eight o'clock in the morn-  
ing and closes at six, but the workshop closes at five  
o'clock, and all work wanted after that hour must be paid  
for at more than day rates. We call your attention to  
this that there may be no misunderstanding. The Law  
Reporter Company, 518 Fifth Street, N. W.

**Legal Notices.****Thos. Walker, Solicitor**

**In the Supreme Court of the District of Columbia.**  
**Rebecca S. Nichols v. John Harrison Nichols et al.**  
 No. 24,479. Equity Doc. 58.

The object of this suit is to have partition, by sale, of lots seven (7) and eight (8), in the subdivision of John Henry Nichols' land at Brightwood, District of Columbia, being part of a tract of land called Peters' Mill Seat, said property being bounded on the 14th Street Road, and the land belonging to A. White and that of Dr. Charles Stone, said lots being more fully and accurately described in the plat of the aforesaid subdivision by B. D. Carpenter, surveyor, dated July 13th, A. D. 1902; and the said subdivision being further described as the tract of land conveyed by deed dated August 31st, A. D. 1892, by Walter M. Moreland et al., to John H. Nichols, said deed being fully recorded in Liber 1803, at folio 88, of the land records of the District of Columbia. On motion of the complainant, it is, this 18th day of September, 1906, ordered that the defendants, John Harrison Nichols, Catherine Nichols, Howard E. Nichols, Nellie Nichols, Clarence H. Nichols, Adelaide Nichols, Eme J. Curry, — Curry, Lulu E. Fernandez, and Mary Nichols, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The

Washington Law Reporter and The Washington Bee before said day. **HARRY M. CLABAUGH**, Chief Justice. True copy. Test: **J. R. Young**, Clerk, by **J. W. Latimer**, Asst. Clerk. 88-3t

**Ralston & Siddons, Solicitors**

**In the Supreme Court of the District of Columbia.**  
**Lucy M. Clarkson et al. v. Charlotte Maurice Touzalin.**  
 Equity No. 28,453. Doc. 58.

The object of this bill is to obtain partition by sale of lot twenty-one (21), in block three (3), in Kalorama Heights, as per plat recorded in Liber, County No. 7, folio 34, of the surveyor's office of the District of Columbia. It appearing to the court that summons for the said defendant has been duly issued and returned not to be found and her non-residence being further proved to the satisfaction of the court by affidavit, on motion of **Ralston & Siddons**, complainant's solicitors, it is, this 18th day of September, 1906, ordered that the defendant, **Charlotte Maurice Touzalin**, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and the Evening Star, newspapers of the District of Columbia. **HARRY M. CLABAUGH**, Chief Justice. True copy. Test: **J. R. Young**, Clerk, by **J. W. Latimer**, Asst. Clerk. 88-3t

**Ralston & Siddons, Attorneys**  
**Supreme Court of the District of Columbia.**  
 Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Curtis J. Hillyer**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 18th day of September, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of September, 1906. **ANGELINE HILLYER**, 1818 21st st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,861. Administration. [Seal.] 88-3t

**Eugene A. Jones, Attorney**  
**Supreme Court of the District of Columbia.**  
 Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Mary E. Doyle**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of September, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of September, 1906. **MARY E. DOYLE**, 1827 Benning Road, N. E. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,923. Administration. [Seal.] 88-3t

**Legal Notices.**

**Edward H. Thomas and Andrew B. Duvall, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
 Holding a District Court.

**In Re The Opening of a Minor Street in Square 650, in the District of Columbia.** District Court, No. 650.  
 Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of section 1808 et seq. of the Code of Laws for the District of Columbia and "An act making appropriations to provide for the expenses of the District of Columbia for the fiscal year ending June 30th, 1907, and for other purposes, approved June 27th, 1906," have filed a petition in this court praying the condemnation of the land necessary for the opening of a minor street from M to N street, in square No. 650, in the District of Columbia, as shown on a map or plat filed with said petition, as part thereof, and praying, also, that a jury of five judicious, disinterested men, not related to any person interested in these proceedings, and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States marshal for the District of Columbia to assess the damages each owner of land to be taken may sustain by reason of the opening of the aforesaid minor street, and the condemnation of the land necessary for the purposes thereof, and to assess the benefits resulting therefrom, including the expenses of these proceedings, as provided in and by the Code and act of Congress heretofore referred to. It is, by the court, this 17th day of September, A. D. 1906, ordered that all persons having any interest in these proceedings be, and they are hereby, warned and commanded to appear in this court on or before the 2d day of October, A. D. 1906, at 10 o'clock A. M., and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessments of benefits of the jury to be empaneled and sworn herein; and it is further ordered that a copy of this notice and order be published once in The Washington Law Reporter, and once in The Washington Evening Star, Washington Post, and Washington Times, newspapers published in said District, before the said 2d day of October, A. D. 1906. It is further ordered that a copy of this notice and order be served by the United States marshal for the said District, or his deputies, upon such of the owners of the fee of the land to be condemned herein as may be found by the said marshal, or his deputies, within the District of Columbia, before the said 2d day of October, A. D. 1906. By the Court: (Signed) **ASHLEY M. GOULD**, Justice. A true copy. Test: **J. R. Young**, Clerk, by **F. W. Smith**, Asst. Clerk. 88-1t

**Birney & Woodard, Attorneys**

**In the Supreme Court of the District of Columbia.**  
**John F. Javins, Plaintiff, v. E. E. Gray, otherwise**  
**Edward E. Gray, Defendant.**

At Law. No. 43,718.

The object of this suit is to recover \$561.80, with interest on \$561.80 from July 1, 1906, for money advanced by the plaintiff to the defendant, and for money paid by the plaintiff for the use of the defendant, at his request, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. On motion of the plaintiff, it is, this 14th day of September, A. D. 1906, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, excluding Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published in The Washington Law Reporter and The Washington Post once a week for three successive weeks before the return day. [Seal] **ASHLEY M. GOULD**, Justice. A true copy. Test: **J. R. Young**, Clerk; **Harry Bingham**, Asst. Clerk. 88-3t

**F. Snowden Hill, Attorney**

**Supreme Court of the District of Columbia,**  
 Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **William H. McElfresh**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 10th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 17th day of Sept., 1906. **JOHN J. McELFRESH**, 809 M st. N. W.; **W. BLADEN JACKSON**, 607 13th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,769. Admn. [Seal.] 88-3t



**Legal Notices.****Ralston & Siddons, Solicitors**

**In the Supreme Court of the District of Columbia.**  
**Joseph Ralston Morris v. The Unknown Heirs, De-**  
**vises, and Alienees of Appelona Whitehair, and**  
**The Unknown Heirs, Devises, and Alienees of**  
**Justinian Mayberry.** Equity No. 26,496. Doc. 58.

The object of this suit is to obtain a decree of this court vesting title by adverse possession in the premises known as sublot nineteen (19) in square one hundred and three (103), Washington, D. C., as per plat recorded in liber H. D. C., folio 145 of the District of Columbia land records. On motion of the complainant, by Ralston & Siddons, his solicitors, it is, this 18th day of September, 1906, ordered that the defendants, the unknown heirs, devisees, and alienees of Appelona Whitehair, and the unknown heirs, devisees, and alienees of Justinian Mayberry, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three months in The Washington Law Reporter and The Evening Star before [Seal] said date. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk.

sept 21, 28; oct 19, 26; nov 23, 30

**Irwin B. Linton, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Robert H. Messer, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 8th day of October, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 18th day of September, 1906. JAMES A. MESSER, by Irwin B. Linton, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,426. Administration. [Seal.] 33-St

**SECOND INSERTION.**

**John B. Larner, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Little C. Osmon, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Friday, the 5th day of October, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 12th day of September, 1906. THE WASHINGTON LOAN AND TRUST COMPANY, by Frederick Eichelberger, Trust Officer, by John B. Larner, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,184. Administration. [Seal.] 37-St

**H. G. Kimball, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Eugenia Rollins, Complainant, v. William T. Rollins**  
**et al., Defendants.** Equity No. 28,468.

The object of this suit is to procure a divorce from the defendant, William T. Rollins, on the ground of adultery. On motion of the complainant, by her solicitor, it is, by the court, this 7th day of September, A. D. 1906, ordered that the defendants, Cleo Johnson and Nellie McNeill, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published in The Washington Law Reporter and The Evening Star once a week for three successive weeks. ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 37-St

**Legal Notices.**

**Irving Williamson, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Jesse C. Weir, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 11th day of September, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 11th day of September, 1906. THEO. F. SARGENT, Pension Bureau; ADA B. COE, 4405 Kansas ave., Petworth, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,895. Administration. [Seal.] 37-St

**J. A. Burkart, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**George M. Strachan et al. v. Thaddeus S. Strachan**  
**et al.** Equity No. 25,338.

ORDER NISI.  
 Joseph A. Burkart, trustee, having reported sale of the property being sublot No. 40, in square 174, Washington, D. C., to Ernest Dammann, for the sum of two thousand seven hundred and fifty (\$2,750) dollars, it is, this 12th day of September, 1906, ordered that the said sale be finally ratified and confirmed, unless good cause to the contrary be shown on or before the 15th day of October, 1906. Provided that a copy of this order be published in The Washington Times and The Washington Law Reporter once a week for three successive weeks before the aforesaid day. ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 37-St

**James B. Horigan, Attorney**  
**Supreme Court of the District of Columbia,**  
**Estate of Thomas Yates, Deceased.**  
**No. 13,902. Administration Docket.—**

Application having been made herein for letters of administration on said estate by Ida Herbron, it is ordered, this 12th day of September, A. D. 1906, that the unknown heirs and next of kin of said deceased, and all others concerned, appear in said court on Thursday, the 25th day of October, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be [Seal] not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 37-St

**John B. Larner, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William De Batz, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of September, 1906. THE WASHINGTON LOAN AND TRUST COMPANY, by Frederick Eichelberger, Trust Officer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,520. Administration. [Seal.] 37-St

**Milton Strasburger, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Charles P. Miller, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of September, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of September, 1906. FRANK G. MILLER, 1414 K st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,905. Administration. [Seal.] 37-St



**Legal Notices.****A. S. Worthington, Solicitor.****In the Supreme Court of the District of Columbia,  
Holding an Equity Court.****Alexander D. Johnson et al. v. Washington L. Berry  
et al. No. 26,464. Equity.**

The object of this suit is to have the court appoint a trustee or trustees in the place and stead of Eliza T. Berry and Washington L. Berry, who were named as trustees under the will of the late Washington Berry, and to vest in such trustee or trustees so to be appointed the legal title, but not the equitable title, to about four hundred and ten acres of land in the District of Columbia, formerly known as Metropolis View, said land being included within the boundaries of the subdivision of Metropolis View made by Thomas W. Berry and John A. Middleton, trustees, which is recorded in the office of the surveyor of the District of Columbia, in liber Gov. Sheperd, at folio 41. It appearing to the court that a summons for all the defendants in the above entitled cause has been duly issued and returned "not to be found" as to all of said defendants, and the non-residence of all of said defendants being further proved to the satisfaction of the court by the affidavit of E. Benton Berry, this day filed, on motion of the complainants it is, this 7th day of September, A. D. 1906, ordered that the defendants, Washington L. Berry, Tiernan B. Berry, William F. Berry, Thomas C. Berry, Maria Hughes Kennedy, Adelaide Savage Mealey, Lillie C. Bowie, Henry A. Berry, Edward L. Berry, and Martha A. Berry, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter, The Washington Post, and The Evening Star, all being newspapers published in the City of Washington, District of Columbia. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk.

[Seal] **John B. Larner, Attorney**  
**Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Samuel Jackson, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Friday, the 19th day of October, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 12th day of September, 1906. THE WASHINGTON LOAN AND TRUST COMPANY, by Frederick Elcheiberger, by John B. Larner, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,144. Administration. [Seal.] 37-3t

**H. Marshal Wheatley, Attorney****In the Supreme Court of the District of Columbia,  
Holding a Probate Court.****Estate of Benjamin Franklin, Deceased.  
Administration. No. 18,796.**

Application having been made herein for probate of the last will and testament of Benjamin Franklin, deceased, as a will of real estate, by the Wesleyan Theological College, it is ordered, this 7th day of September, A. D. 1906, that John Franklin, Leonard Franklin, Lena Franklin, Hartley Franklin, Thomas Franklin, Harriet Franklin, Harry Franklin, Minnie Franklin, Eliza Somers, Sarah Taylor, Mildred Franklin, Robert Franklin, Sarah Franklin, Rev. Melvin Taylor, and Rev. William I. Shaw, and all others concerned, appear in said court on the 1st day of November, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before [Seal] said return day. ASHLEY M. GOULD, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 37-3t

**Legal Notices.****Charles Bendheim, Solicitor****In the Supreme Court of the District of Columbia.****Margaret McKernan v. Gerald V. McKernan et al.  
No. 26,812. Equity Doc. 58.**

The object of this suit is to procure a divorce from the defendant, Gerald V. McKernan, on the ground of adultery. On motion of the complainant, it is, this 11th day of September, 1906, ordered that the defendants, Gerald V. McKernan, Myrtle Brown, and Blanche Heckman, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening [Seal] Star before said day. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. 37-3t

**William K. Quinter, Solicitor****In the Supreme Court of the District of Columbia.****James F. Hood et al., Trustees, Complainants, v.  
Louisa Cammack et al., Defendants.****Equity, No. 26,483.**

The object of this suit is to quiet title by adverse possession in the complainants to the following described property, situate in the District of Columbia, to wit: The north forty-nine (49) feet and six (6) inches of original lot 16, in square 42, beginning for the same at the northeast corner of said lot on the line of Twenty-third street west, and running thence south 49 feet 6 inches; thence north 75 feet; thence north 19 feet; thence west 47 feet 2 1/2 inches to a thirty-foot alley; thence north 30 feet and 6 inches, and thence east 123 feet and 2 1/2 inches to the place of beginning. On motion of the complainants, it is, this 13th day of September, 1906, ordered that the defendants, Louisa Cammack, Anna K. Nevins, Louise E. Nevins, Henry J. Key, M. Catherine Key, Jenkins, Virginia P. Key Dangerfield, William Key, Edward Key, and the unknown heirs, devisees, and assignees of the following-named persons: Elizabeth Key Johnson, Rebecca Key Tyson, Emily L. Key Hoffman, Louisa Key, and Philip Barton Key, deceased, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of forty days from this date; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and The Evening Star once a week for three successive [Seal] weeks before said return day. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 37-3t

**E. A. Newman, Solicitor****In the Supreme Court of the District of Columbia.****Claudia M. Moran and Another v. The Unknown  
Heirs or Devisees of John B. Bernaben, Deceased.****No. 26,501. Equity Doc. 59.**

The object of this suit is to obtain a decree of the court vesting title by adverse possession in the complainants according to their respective rights in and to all that certain piece or parcel of ground and premises situate in the city of Washington and District of Columbia, and known and distinguished as and being part of original lot 6 in square 426. Beginning for said part at the northwest corner of said lot and running thence east 78.67 feet to the line of the property conveyed to Young by deed recorded in liber No. 1721, folio 459, one of the land records of the District of Columbia; thence south with the west line of said property 23.58 feet; thence west 22.47 feet to the line of the property conveyed to the heirs of Martha J. Greer by deed recorded in liber No. 1761, folio 194, of the said land records; thence north 0.96 of a foot, and thence southwesterly 56.20 feet, more or less, to the line of 8th street west, and thence north along the line of said 8th street 23.58 feet to the said place of beginning. On motion of the complainants, it is, this 7th day of September, 1906, ordered that the defendants, the unknown heirs or devisees of John B. Bernaben, deceased, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three months in The Washington Law Reporter and The Washington Post and The Evening Star before said day. ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. sept. 14, 21; oct. 12, 19; nov. 9, 16

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WASHINGTON, D. C. . . . . OCTOBER 5, 1906

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## Suggested Changes in Supreme Court Rules of Practice.

Those members of the bar and others interested who have verbally suggested changes in the Rules of Practice of the Supreme Court of the District of Columbia to members of the committee appointed by the president of the Bar Association to prepare a proposed revision of the rules, are requested to immediately put their suggestions in writing and send them in. All communications should be addressed to the chairman of the committee, Mr. W. Mosby Williams, Columbian Building.

MR. RUSSELL P. BELEW, formerly private secretary to Mr. Justice Stafford, has been appointed an assistant clerk of the Supreme Court of this District, to fill the vacancy caused by the resignation of Mr. J. Wilmer Latimer. Mr. Belew is a native of Virginia, coming to this city in 1899. Subsequently he was appointed private secretary to Mr. Justice Jeter C. Pritchard, and when the latter retired from the District bench, Mr. Belew was appointed by Mr. Justice Stafford as his secretary. Mr. Belew has many friends among the members of the bar who are glad at his promotion. He is attending the Georgetown University Law School, and will graduate therefrom at the close of the present session.

Mr. Latimer, whose resignation we announced some weeks ago, has entered actively upon the practice of his profession with offices in the Fendall Building. The editor of THE LAW

REPORTER has been the recipient of many courtesies from him during his service as assistant clerk, and in common with his numerous other friends, wishes him the large measure of success to which his abilities and character entitle him.

## Negligence—Sale of Dangerous Article—Liability for Injury to Third Persons.

In *Standard Oil Co. v. Parrish*, decided by the United States Circuit Court of Appeals for the Seventh Circuit (145 Fed., 829), it is held that a retailer of illuminating oil must be held to contemplate that it will be used in the ordinary and usual lamps in the households of purchasers, and where the oil sold is not of the quality called for, but is unfit and dangerous for such purpose, the seller is liable for an injury resulting from such ordinary use to a member of the purchaser's family. It appeared in that case, that plaintiff's intestate, a child 10 years old, was alone in a room, when her clothing took fire and she was fatally burned. The pieces of a kerosene lamp which had stood upon a table were found on the floor, within a circle about three feet in diameter, and the carpet within such circle and the table-cloth were in flames. Such pieces and the burner were introduced in evidence. It was also shown that the oil with which the lamp was filled contained a dangerous admixture of gasoline. It was held that, the physical exhibits not being brought up, the reviewing court could not say there was a failure of evidence to support a finding that the death of the child was caused by the explosion of the lamp due to the dangerous character of the oil. It was also held that where there was a conflict of evidence as to whether or not kerosene oil sold by defendant contained a dangerous proportion of gasoline, evidence of a general custom on the part of defendant's employees to use the same buckets indiscriminately in drawing kerosene and gasoline was competent and properly admitted. The court, in its opinion, said:

1. Parrish asked for illuminating oil of the standard quality. Defendant sold him oil which contained gasoline to such an extent that the mixture was liable to explode the ordinary lamp. Invoking the general rule that a manufacturer or vendor is not liable to persons who have no contractual relations with him, defendant contends that for its negligent act it was answerable only to Parrish, the purchaser. But defendant was supplying the oil for illumination, and must have contemplated that it would be burned in the ordinary and usual lamps in the households of the purchasers. Further, the case comes, not under the general rule, but under the well-established exception that one must not knowingly send out an instrumental-ity which is imminently dangerous without

**Legal Notices.****Wm. A. McKenney, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Lawrence F. Graham, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of September, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of September, 1906. AMERICAN SECURITY & TRUST CO., by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,553. Admn. [Seal.] 36-3t

**T. Percy Myers, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscribers who were by the Supreme Court of the District of Columbia granted letters of administration on the estate of James Dowd, deceased, have with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 24th day of September, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 5th day of September, 1906. T. PERCY MYERS, JOHN J. BROSNAN, by T. Percy Myers, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,069. Administration. [Seal.] 36-3t

**Chas. F. Diggs, Solicitor  
In the Supreme Court of the District of Columbia,  
Holding an Equity Court.**  
**Henry W. Thurston v. Francis B. Clark, Charles B. McLellan, Henry F. Woodard, and Mable Grace McKay, executors of the estate of Nathaniel McKay, deceased.** Equity, No. 26,788.

The object of this suit is to have declared null and void an assignment by Henry W. Thurston to Francis B. Clark, of a debt of \$41,211.68, due by the estate of Nathaniel McKay, deceased, to the said Thurston, and also to have the reassignment of the said debt by the said Clark to the defendant, Charles B. McLellan, declared null and void; and for an accounting by the said Clark for money received by him on account of the said debt, from the executors of the estate of the said Nathaniel McKay, deceased; and for a decree declaring the said debt to be the property of the said Thurston, and for an order directing the said executors to pay over to the said Thurston the amount of money now in their hands, which may be due on account of the said debt, as per a compromise agreement, authorized by this court. On motion of the complainant, it is, this 8th day of September, A. D. 1906, ordered that Francis B. Clark and Charles B. McLellan, two of the defendants in the above entitled cause, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter, Evening Star, and Washington Post. By the [Seal] Court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 36-3t

**Delmas C. Stutler, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Martin Galtley, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of September, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of September, 1906. DELMAS C. STUTLER, 458 La. ave., N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,891. Administration. [Seal.] 36-3t

**Legal Notices.****Joseph H. Stewart, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Caleb I. Taylor, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of August, 1906. ANNIE DANIEL, by Joseph H. Stewart, her attorney, 211 C st. S. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,833. Administration. [Seal.] 36-3t

**Wilson & Barksdale, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Harriet Seton Harris, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 31st day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of August, 1906. FANNIE C. WILLIS, 1443 Q st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,583. Administration. [Seal.] 36-3t

**Joseph H. Stewart, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Louisa M. Lampton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of August, 1906. EDWARD W. LAMPTON, 1541 14th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,832. Administration. [Seal.] 36-3t

**Delmas C. Stutler, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Margaret A. Vanderslice, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of September, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of September, 1906. WILLIAM E. AMBROSE, 458 Louisiana ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,806. Administration. [Seal.] 36-3t

**Hayden Johnson, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John Lippincott, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of March, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of August, 1906. WM. W. BOARMAN, Columbian Bldg. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,823. Admn. [Seal.] 36-3t

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## Our District Courts.

The Court of Appeals of this District will convene for the October term on Tuesday, October 2, 1906. The calendar for the term is the heaviest in the history of the court, and contains 112 cases, of which 47 cases are on the general calendar, 18 on the special calendar, and 47 are appeals in patent causes. The cases heard prior to the adjournment of the court in June last were all disposed of, save one patent appeal in which a motion for a rehearing is pending. Since the adjournment of the court a vacancy has been created by the resignation of Mr. Justice Duell. His successor has not been appointed, but the announcement is expected at an early day.

The several branches of the Supreme Court of the District will convene for the October term on Tuesday, October 6. The assignment of the justices to the several courts will, it is expected, be as follows: Circuit Court No. 1, Mr. Justice Wright; Circuit Court No. 2, Mr. Justice Anderson; Equity Court No. 1, Mr. Chief Justice Olabaugh; Equity Court No. 2, Mr. Justice Gould; Criminal Court No. 1, Mr. Justice Stafford; Criminal Court No. 2, Mr. Justice Barnard; Probate Court, Mr. Justice Gould.

The several civil calendars of the court contain a total of about 725 cases, a decrease as compared with the number on the calendar for the October term, 1905. On the equity calendar there are about 55 cases, on the law calendar there are 670 cases, of which 521 are on the trial calendar, an increase of 30,

and 149 are on the appeal calendar, a decrease of 46. The criminal calendar is also quite a heavy one.

## Judge Stafford Indorsed for the Court of Appeals.

An important meeting of the Bar Association of this District was held on Monday afternoon, September 24, 1906. The purpose of the meeting was to consider the question of indorsing one of the justices of the Supreme Court of this District for the vacancy on the Court of Appeals caused by the resignation of Mr. Justice Duell. The meeting was largely attended, and after a somewhat spirited debate the vote was taken, resulting in the choice of Mr. Justice Stafford, Mr. Justice Gould also receiving a highly complimentary vote.

The elevation of Mr. Justice Stafford to the Court of Appeals bench would be eminently satisfactory to the bar of this District. While his term of service on the Supreme Court of the District has been comparatively brief, covering a period of about two years, his scholarly attainments, his exceptional ability as a judge, and his engaging personality have won for him not only the genuine respect, but the cordial regard of the members of the bar to a degree not surpassed by any judge who has sat upon the bench of this District. The suggestion of his name was made immediately upon the announcement of the resignation of Mr. Justice Duell, his splendid qualifications for the position being recognized as well by those who advocated the appointment of others as by those who sought his elevation.

Judge Stafford, in attainments and in character, would adorn the highest court in the land. Not only would his appointment to the Court of Appeals be an honor deservedly conferred upon him—he would do honor to the position.

## Supreme Court of the United States.

The Supreme Court of the United States will convene for the October term on Monday, October 8, 1906. A number of cases of national importance are on the calendar of the court, among them being the contempt proceedings growing out of the lynching of a negro prisoner in whose case the court had taken jurisdiction; a revenue case involving the question of whether the Isle of Pines is Cuban or American territory; the case of Moyer et al. v. Nichols, in which the release of the appellants, who are in jail in Idaho charged with complicity in the murder of former Governor Stenness, is sought, and other cases. No appointment has yet been made to fill the vacancy occasioned by the retirement of Mr. Justice Brown.

## New Jersey Court of Errors and Appeals.

ANDREOSIK

v.

## THE NEW JERSEY TUBE COMPANY.

## MASTER AND SERVANT; RISKS AND INJURIES; NON-SUIT.

1. The plaintiff complained to the superintendent at 10 o'clock in the forenoon that the machine upon which he was working was out of order. The defect was obvious. The superintendent said: "You go right ahead with the work; we are overloaded with work, and noon hour I will fix this for you." The repair was not made at the noon hour. Nevertheless, the plaintiff resumed work upon the obviously defective machine, and at 3 o'clock was injured by reason of the defect complained of. *Held*, that the promise to repair was definite and specific as to time of performance; that there was no question for the jury; that the plaintiff was properly non-suited.
2. The servant assumes not only the ordinary risks incidental to employment, but as well all risks arising and becoming known to him during his service. The master, by promising to amend a defect complained of as an inducement to the servant to continue, forthwith takes from the servant the risk, and thereafter, and during the period for repair, assumes it. Where the promise is general and indefinite the master's undertaking runs for a reasonable time [approving *Dowd v. Erie R. R. Co.*, 41 Vroom (70 N. J. L.), 451]. Where it is to repair at a fixed time, it runs until the termination of the time fixed.
3. When the agreement to repair is general, i. e., inferential as to the time of its performance, if the master's promise is not performed within a reasonable time for its fulfillment, and the servant continues to incur the danger in the employment, after the lapse of such reasonable time the servant assumes the risk of injuries occurring thereafter. In such case there may be a question for the jury of reasonable time.
4. When the agreement to repair is not indefinite, but specific, as to the time of its performance, if the promise is not performed within the time specified for its fulfillment and the servant continues in the employment after a manifest breach of the master's promise to repair, the assumption of risk by the master ceases, and the servant reassumes the risk of subsequent injuries therefrom. Where the time of performance is clearly fixed by the agreement of the parties, there is no question for the jury of a reasonable time for performance.
5. It does not follow that, whenever it is proved that a promise to repair was made and acted upon, the case is *prima facie* for the jury.—*New Jersey Law Journal*.

Decided June 18, 1906.

In error to the Supreme Court. Affirmed.

*Mr. Samuel Kalisch, Jr., and Mr. Samuel Kalisch* for the plaintiff in error.*Messrs. Lindabury, Depue & Faulks* for the defendant in error.*Mr. Justice DILL* delivered the opinion of the Court:

This action is brought to recover damages for personal injuries sustained by the plaintiff while in the defendant's employ, through the defendant's alleged negligence.

The plaintiff, a man 28 years of age, had been employed in the defendant's mill for about two years prior to the accident—eighteen months as helper, about two months as an assistant upon the machine, and about three months prior to the injury in charge of the machine at which he was injured. When placed in charge of the machine he was instructed as to its workings. Prior to 10 o'clock in the morning of November 11, 1903, the day upon which he was injured, the plaintiff discovered that the machine upon which he was working was out of order. He

testified that this was easy to see. About 10 o'clock he complained of this to the superintendent, who replied: "You go right ahead with the work; we are overloaded with work, and noon hour I will fix this for you."

What a third party understood the superintendent to say is not material to the decision. The foregoing is what the plaintiff asserts the superintendent promised him, and was the agreement to repair upon which the plaintiff relied in resuming work.

The plaintiff continued to work on the machine till noon hour, quitting at 12 o'clock without injury. He ate his lunch near the machine, in sight of it, and was in and about the place during the noon hour. During the noon hour, from 12 to 1 o'clock, the machine was not repaired, and this was apparent to the plaintiff. The defective condition of the machine when the plaintiff resumed work was obvious. At 1 o'clock the plaintiff resumed work and continued until 3 o'clock, when he was injured by the defective machine.

No evidence was offered in behalf of the defense.

The chief justice, who tried the case below, non-suited the plaintiff, and, holding the promise to be definite as to the time of performance, laid down this rule: "Where the master says he will repair the machine, or have it repaired at a specific time, the employee is entitled to continue to operate the defective machine at the master's risk until that time has elapsed; but if, after that time, the master has not made good his word and made the repairs and the employee still continues to operate the machine, the risk shifts, and the employee assumes it, relieving the master."

The plaintiff in error seeks to review this ruling, and for that purpose this writ of error is prosecuted.

We are of opinion that the rule laid down by the chief justice was correct, and that the non-suit was proper. The questions of law decisive of the case at bar have not been heretofore passed upon by this court. The plaintiff was engaged in operating a machine which was obviously defective. He was aware of the danger incident to such defective condition. The servant, by accepting employment or voluntarily continuing therein, with the knowledge or means of knowing the dangers involved, is deemed to have assumed the risk. This rule the plaintiff seeks to avoid by proof that he notified the master of the defect, and that the master, for the purpose of inducing the plaintiff to continue in his employment, promised to remedy it.

The question presented is whether the servant was chargeable, in spite of the promise, with the assumption of the risk in question and as a conclusion of law. The decision must, in the first place, depend upon the character of the promise to repair. Was it express or inferential as to the time of fulfillment? If inferential, there may have been a question for the jury. If express, there was no question for the jury on that point.

The words "noon hour" are definite terms: "Noon—midday, and, in exact use, twelve o'clock" (*Century Dictionary*). "Hour—a particular time; a fixed or appointed time" (*Century Dictionary*). "Noon" designated the be-

gining of the period, i. e., 12 o'clock; "hour," the duration of the period. It is clearly shown by the evidence that the term "noon hour" was in common use, and was well understood by both parties to mean from 12 o'clock noon to 1 o'clock p. m.

The plaintiff says he quit work at 12 o'clock and went to work at 1 o'clock. Again, he was asked if he worked "before the noon hour" on the day on which he was injured. "Yes, sir," he answered, "I started at seven and worked until twelve." The words "noon hour" are used by the plaintiff and his witnesses, and always meaning from 12 o'clock noon to 1 o'clock p. m.

In *King-Ryder Lumber Co. v. Cochran*, 71 Ark., 55, the plaintiff, who was running an edging machine in a lumber mill, discovered a defect in the machine in the morning and informed the foreman, who told him "to go on and run it until noon, when he would have it repaired." The court treated this as a promise to repair at a definite time, and it is cited by subsequent authorities as a definite promise. Otherwise the case is not in point.

In the case before us, we are of the opinion that the promise to repair was not general, but specific, as to time of performance. The time when the promise to repair should have been fulfilled is too clear for reasonable controversy. There was no need of submitting that question to the jury, or any other question bearing upon the subject.

In discussing the further questions involved it should be noted that in this case: (1) The promise to repair, made after the work was begun, was definite as to the time of performance. (2) The accident did not occur between the time of the making the promise and before the end of the period fixed for its fulfillment. (3) The jury was subsequent to (a) the complaint, (b) the promise, (c) the agreed time of performance, and (d) the master's default. In resuming work under these circumstances, was the risk the servant's or the master's?

The two recent cases in the Supreme Court [*Dowd v. Erie R. R. Co.*, 41 Vroom (70 N. J. L.), 451, and *Dunkerley v. Webendorfer Machine Co.*, 42 Vroom (71 N. J. L.), 60] have not heretofore been before this court. In both the master's agreement was indefinite as to the time when the repair was to be made. In the *Dowd* case, the promise was to have it attended to "as soon as he could." In the *Dunkerley* case, the agreement was to remedy the fault "at the first opportunity."

In the *Dowd* case Mr. Justice Swayze states the law to be as follows: "The rule that the servant assumes not only the ordinary risks incident to the employment, but also such special features of danger as are plain and obvious, and also such as he would discover by the exercise of ordinary care for his personal safety, is well established in this State" (citing cases). "The servant assumes, as well, those risks which arise or become known to him during the service as those in contemplation at the original hiring." *Dillenberger v. Weingartner*, 35 Vroom, 292, Court of Errors and Appeals, 1899. "To the rule that the servant assumes the obvious risks of the employment, an exception is made where the master has promised to

amend the defect or to make the place safe, and the servant continues the work in reliance upon the promise." . . . "The master is exempted from liability in the case of obvious risks for the reason that the servant, by continuing in the employment with knowledge of the danger, evinces a willingness to incur the risk, and upon the principle *volenti non fit injuria*. But when the servant shows that he relied upon a promise made to him to remedy the defect, he negatives the inference of willingness to incur the risk. In such a case this inference can only be drawn when the servant continues the work, although the promise is not performed within a reasonable time." 41 Vroom (70 N. J. L.), 451, at page 455.

We are referred to the decision of the Supreme Court of the State of New York, in *Rice v. Eureka Paper Co.* (70 App. Div., 336), as the leading authority for the insistence that the *Dowd* case should not be approved by this court. The answer to this argument and the citation in its support is twofold. In the first place, the decision of the New York Supreme Court in the *Rice* case is not in conflict with the *Dowd* case. In the *Dowd* case, the promise to repair was indefinite as to time of performance by the master. The court construed it to be a general promise. In the *Rice* case the New York Supreme Court construed the promise to repair as specific and based its conclusion upon that construction of the promise (70 App. Div., at p. 342, et seq.). It held that, in a case where the promise was to repair at a definite time, the risk in the interim, between the time of the making of the promise and the time set for its performance, was that of the servant and not of the master (id. p. 356).

In the second place, the Court of Appeals of New York reversed the Supreme Court (*Rice v. Eureka Paper Co.*, 174 N. Y., 385, reversing 70 App. Div., 336). The Court of Appeals overruled the holding below as to the character of the promise to repair, declared that it was not specific as to time of performance (id. at p. 397), construed it as a promise to repair generally, indefinite as to time of its performance (id. 398), and, proceeding upon that construction, established the law of that State in harmony with the doctrine of the *Dowd* case.

The doctrine of the *Dowd* case is supported by the authorities cited by Mr. Justice Swayze, by the decision of the Court of Appeals of New York in the *Rice* case, by the eminent text writers and the leading cases ably marshaled in the opinion therein and, in addition, by the following authorities: *Ray v. Diamond State Steel Co.*, 2 Penne. (Del.), 525; *Boyd v. Blumenthal*, 3 Penne. (Del.), 564; *Belair v. Chicago, etc., R. R. Co.*, 43 Iowa, 662; *Buehner v. Creamery Package Mfg. Co.*, 124 Iowa, 445; *Foster v. Chicago, etc., R. R. Co.*, 127 Iowa, 84; *Brown v. Levy*, 108 Ky., 163; *Taylor v. Nevada, etc., R. R. Co.*, 26 Nev., 415; *Pleasants v. Raleigh, etc., R. R. Co.*, 95 N. C., 195; *Barney Dumping Boat Co. v. Clark*, 112 Fed. (C. C. A.), 921; *Labatt's "Master and Servant,"* Vol. I, p. 1209, sec. 427 (b).

The rule of the *Dowd* case is so generally recognized as a part of the jurisprudence of this country and is so strongly supported by reason and justice as to justify its adoption. We accordingly approve the decision of the Supreme

Court of this State in *Dowd v. Erie R. R. Co.* [41 Vroom (70 N. J. L.), 451.]

The approval of *Dunkerley v. Webendorfer Machine Co.* [42 Vroom (71 N. J. L.), 60] follows as a matter of course.

Thus far we have dealt with those cases where the master's promise to repair was general and not specific as to time or performance. We come now to consider the application of the rule to those cases where, as in this case, the time of performance is definitely fixed by the agreement of the parties. The authorities where the promise has been of this character are comparatively few.

Two questions arise in a case where the promise to perform is definite:

First. Is the *ad interim* risk between the making of the promise and the termination of the period fixed therein for its performance the master's or the servant's?

It has been held by authorities of repute that during the interim the servant assumes the risk, on the ground that before the time definitely agreed upon for the making of the repairs he can have had no expectation that such repairs would meanwhile be made, and therefore can not, in the interim, have continued his services because of such expectation. *Standard Oil Co. v. Helmick* (148 Ind., 457), and *Rice v. Eureka Paper Co.* (70 App. Div., 336, N. Y. Supreme Court), are generally cited in support of this theory. These decisions are dependent upon facts and supported by principles not involved here. Their conclusions are reached by divergent and not harmonious lines of reasoning. The Supreme Court of Indiana subsequently, in the *Potter* case (post), disavowed the doctrine of the *Helmick* case. The *Rice* case was reversed by the Court of Appeals of New York, although upon another point. We do not agree with the rule in support of which these cases are cited, and decline to adopt it.

It has also been held, and with better reason, that, as in the case of a general promise, carrying with it an implication of performance within a reasonable time, so also in the case of a promise to remedy a defect at a definite and agreed time, the master *eo instante* assumes the risk from the time of the making of the promise up to and including the expiration of the time specified for its fulfillment. *Louisville Hotel Co. v. Kaltenbrun*, 80 S. W. (Ky.), 1163; upon application for rehearing, 82 S. W. (Ky.), 378; *King-Ryder Lumber Co. v. Cochran*, 71 Ark., 56; *Anderson v. Seropian*, 147 Cal., 201; *McFarlan Carriage Co. v. Potter*, 153 Ind., 107, at p. 114; overruling (at p. 116) on this point *Standard Oil Co. v. Helmick*, supra. The rule that a promise to repair made by the master, acted upon by the servant, creates an assumption of risk by the master, beginning instantaneously upon the making of the promise and continuing thereafter to the end of the period named for the repair, is supported by sound reason, by the weight of authority, and is in accord with the reasoning of the *Dowd* case.

Second. At whose risk does the servant continue his work after the lapse of the time specified for the making of the repair and after the master has obviously defaulted in the performance of such promise?

Upon this point we are referred to the follow-

ing cases: *Louisville Hotel Co. v. Kaltenbrun* (Ct. of App. of Ky., 1904), 80 S. W. Rep., 1163; *Eureka Co. v. Bass*, 81 Ala., 200 (1886); *Trotter v. Chattanooga Furniture Co.*, 101 Tenn., 257 (1898).

The facts in the *Louisville Hotel* case differ from those in the case at bar, since the injury there occurred between the making of the promise and the time set for its performance. That case does not decide that the master's assumption of risk terminates with the time set for the performance of the promise, which is the question before us. The case goes no further than to hold that upon the making of the promise the master instantaneously assumes the risk and is responsible for an injury occurring between the time of the making of the promise and the time appointed for its fulfillment.

In the *Bass* case the complaint of the servant was of a defective fuse, and the master promised "to get other fuse" and told him to "do the best he could with what he had." The court treated this as a general promise involving the question of a reasonable time, but in arriving at its conclusion it used the following language pertinent to the question before us: "The injury, in other words, must have occurred within the time at which the defects were promised to be removed. If the employee continues to expose himself to the danger by remaining in the service longer than this, he does so in face of the fact that the promise of the employer is violated, and that he has no reasonable expectation of its fulfillment. He can no longer, therefore, rely upon the promise, and must know that his continuance in service under such circumstances is equally as hazardous and hopeless of remedy as if no assurance or promise had ever been made. A promise already broken can afford no reasonable guaranty of the fulfillment of any expectation based on its disappointed assurances."

In the recent case of *Gunning System v. La-pointe* (212 Ill., 274, 1904), there is, also, a dictum—dictum, because the promise in the case was a general one—that "if the promise is to repair by a fixed time, then, after the expiration of the time fixed, the servant assumes the risk from the defects complained of."

*Trotter v. Chattanooga Furniture Co.* is the only one of the three cases cited which is in point. In that case the promise was definite to repair "in the morning." The promise was not kept, but the servant continued his work and the injury occurred ten days after the time set for the performance of the promise. The court held that the servant had reassumed the risk, citing in support of its decision the *Bass* case, relying upon the language of that case already quoted. In the *Trotter* case the court, affirming the judgment below non-suiting the plaintiff, said: "We do not think it would have been proper, in this case, to have submitted to the jury the question as to what was reasonable time. The promise fixed the time."

A well-reasoned authority in point is the decision of the Supreme Court of Wisconsin (1901) in *Albrecht v. Chicago & Northwestern Railway Co.* (108 Wis., 530). In that case a locomotive fireman was ordered, about 5 o'clock in the afternoon, to go on a trip, which was subsequently made at 10 o'clock p. m. At 7.15 p.



m. he went on board the engine and performed various duties. At 8 o'clock p. m. he complained to the engineer of the absence of a shield over the glass indicating the oil supply, stating that he had searched for the shield and failed to find it, adding: "You must get a shield for this lubricator," to which the engineer replied: "All right, I will get one." The engineer did not keep his promise. The fireman was in and about the cab from 8 o'clock to 10 o'clock p. m., and then went on the trip in spite of the fact that the engineer had not kept his promise, and although the fireman saw that the shield was not in its place. At 1 o'clock in the morning the glass burst and he was injured by reason of the absence of the shield.

The court below held the engineer's undertaking to be a general promise and left it to the jury to determine the question of reasonable time. The Supreme Court, reversing the holding below, construed the promise made at 8 o'clock p. m., to be a promise on the part of the engineer to furnish the shield before the trip was made at 10 o'clock p. m., and held the promise to be definite as to time of performance and that there was no question to be submitted to the jury, saying: "When the time expired for the engineer to redeem his promise, under the circumstances indicated, respondent was no longer protected thereby in his right to hold defendant responsible for the consequences of the danger. . . . In proceeding thereafter in the defendant's service he voluntarily assumed the risk of which he had complained as a part of his contract of employment, and is remediless for what followed."

We agree with Mr. Labatt, in his recent work on "Master and Servant," that "the only rational view seems to be that, as soon as the period contemplated for the removal of the dangerous conditions terminated, the servant's position is precisely what it would have been if no promise had been given; that is to say, he reassumes the risk" (Vol. 1, p. 1204, sec. 425).

Upon the point of the termination of the master's liability, Mr. Justice Swayze, in the Dowd case, says: "The failure to perform the promise" (to repaid "as soon as he could") "within a reasonable time indicates that it will not be performed, and the continuance in the work thereafter justifies the inference that the servant did not rely upon performance of the promise, but was willing to take the risk. He is, therefore, in such case, held to have assumed the risk, notwithstanding the promise." 41 Vroom (70 N. J. L.), at p. 456.

This proposition relating to a general promise is supported by the following authorities: *Eureka Co. v. Bass*, 81 Ala., 200; *Ill. Steel Co. v. Mann*, 170 Ill., 200; *Gunning System v. Lapointe*, 212 Ill., 274; *Burns v. Windfall Mfg. Co.*, 146 Ind., 281; *Breckinridge Co. v. Hicks*, 94 Ky., 362; *Stalzer v. Packing Co.*, 84 Mo. App., 565; *Gulf, etc., R. R. Co. v. Brentford*, 79 Texas, 619; *Stephenson v. Duncan*, 73 Wis., 404; *Corcoran v. Milwaukee Gas Light Co.*, 81 Wis., 191; *Ferriss v. Berlin Machine Works*, 90 Wis., 541.

Similarly, where the agreement as to the time of performance is by the parties clearly defined, the failure to perform the promise within the agreed time indicates that it will not be performed, and a continuance of the

work thereafter justifies the inference that the servant no longer relied upon the performance of the promise, but was willing to take the risk. In such case, also, the servant must be held, where there is a manifest breach of the agreement to repair, to have reassumed the risk at the expiration of the time fixed for the performance of the master's promise.

The principle applicable to both classes of cases is that, when the time appointed for the removal of the conditions given rise to the danger expires, whether that period be expressly or impliedly fixed, the servant's relation to the master is precisely the same as if no promise had been made. He is relegated back to his original position and reassumes the risk. After the master has manifestly defaulted in his promise to repair, the servant resumes work with no existing contract on the part of the master to assume the risk, and therefore continues at his (the servant's) risk.

In the present case, where the promise was to repair the defect at a specified time and where the master had manifestly failed to make the repair within the time specified, the servant in resuming work thereafter brought himself again within the original rule and assumed not only such special features of danger as were plain and obvious, but such as he would discover by the exercise of ordinary care for his personal safety.

The conclusions which we have reached negative the proposition that whenever it is proved that a promise to repair was made and acted upon, the case is *prima facie* for the jury. The master in the making of the promise, and the servant acting upon it, fix their mutual relation.

Where the promise to make the repair is indefinite or inferential as to the time of the performance, there may arise a question for the jury of reasonable time on the part of the master for performance, and consequently on the part of the servant for continuing to incur the risk in the expectation that the master will perform. Where, however, the promise is express as to time of performance the rule is otherwise.

A promise made by the master, acted upon by the servant, to repair a specified defect at a definite time thereafter, creates an assumption of the risk by the master. This assumption of the risk begins forthwith upon the naming of the promise and continues thereafter and throughout the period fixed for the making of the repair; but this undertaking of the master terminates and his liability thereunder ceases at the end of that period. The termination of the master's undertaking and the termination of the period fixed for repair are identical in point of time.

In such case it would be error to submit to the jury any question relating thereto which would enable the jury to find, in conflict with the terms of the contract, that the responsibility on the part of the master still existed after the expiration of the period during which the master had agreed to undertake it. As a rule, whether the promise is general or definite is a question for the court. It follows, therefore, both on principle and by authority, that the non-suit below was proper.

The judgment of the Supreme Court is affirmed.

## COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

Calendar for October Term, 1906.

## GENERAL CALENDAR.

No. 1604. Leslie M. Shaw, Secretary of the Treasury, appellant, v. Morgan Bryan, trustee in bankruptcy. D. W. Baker for appellant; G. E. Hamilton, M. J. Colbert, and J. J. Hamilton for appellee.

No. 1648. Elmore M. Phelps, appellant, v. Deademona G. Phelps. J. A. Johnson for appellant.

No. 1654. A. Guion Jennings, appellant, v. Philadelphia, Baltimore and Washington Railway Co. E. Hilton Jackson, Henry E. Davis, and F. F. Barker for appellant; F. D. McKenney and J. S. Flannery for appellee.

No. 1660. Northwest Eckington Improvement Co. et al., appellants, v. Charles M. Campbell. J. H. Ralston, F. L. Siddons, W. E. Richardson, for appellants; John Ridout for appellee.

No. 1661. Mary A. Parsons, petitioner, appellant, v. Norton M. Little et al. S. H. Giesy, for appellant; W. E. Lester for appellees.

No. 1662. John A. Brill et al., appellants, v. The Washington Railway and Electric Co. Melville Church for appellants; F. P. Warfield and H. S. Duell for appellee.

No. 1664. Robert W. Brown, executor, &c., appellant, v. The Grand Fountain of the United Order of True Reformers et al. A. A. Birney and J. H. Stewart, for appellants; George H. White for appellees.

No. 1668. Oliver R. Harr, appellant, v. Lillian Pike Roome. Henry E. Davis for appellant; W. W. Millan and R. E. L. Smith for appellee.

No. 1669. Jacob Keroes, appellant, v. Edward N. Richards. Hayden Johnson for appellant; Wm. O. Prentiss for appellee.

No. 1671. The Fifth Congregational Church of Washington, D. C., appellant, v. Robert S. Bright, trustee. W. C. Sullivan for appellant; S. H. Giesy for appellee.

No. 1673. Adams Express Co., a corporation, appellant, v. Alfred Edgar Adams, administrator, etc. W. S. Thomas and S. T. Thomas for appellant; A. B. Webb and H. L. Franc for appellee.

No. 1676. George W. Moore, adm'r, &c., appellant, v. Robert S. Pywell. A. E. L. Leckie, C. M. Fulton, and J. W. Cox for appellant; J. J. Darlington and C. C. James for appellee.

No. 1678. Columbia National Sand Dredging Co. et al., appellants, v. George B. Morton et al. J. K. McCammon and J. H. Hayden for appellants; G. E. Hamilton, M. J. Colbert, and J. J. Hamilton for appellees.

No. 1679. Lawrence S. Nicolai, appellant, v. Thomas Galloway et al. A. E. L. Leckie, C. M. Fulton, and J. W. Cox for appellant; S. T. Thomas for appellees.

No. 1680. Stilson Hutchins et al., appellants, v. Carrie L. Munn. E. C. Brandenburg, C. A. Brandenburg, and F. W. Brandenburg for appellants; Samuel Maddox and H. P. Gatley for appellee.

No. 1681. Simon D. Bronson, appellant, v. Edmund Brady. A. H. Bell for appellant; G. E.

Hamilton, M. J. Colbert, and J. J. Hamilton for appellee.

No. 1683. Paul D. Barstow, an infant, by Francis D. Barstow, his father and next friend, appellant, v. The Capital Traction Co., a corporation. F. J. Hogan and W. J. Lambert for appellant; R. Ross Perry for appellee.

No. 1684. Francis D. Barstow, appellant, v. The Capital Traction Co., a corporation. F. J. Hogan and W. J. Lambert for appellant; R. Ross Perry for appellee.

No. 1686. Lucy M. Davis, appellant, v. Frank F. Davis. M. N. Richardson and J. A. Cobb, for appellant; H. H. Glassie for appellee.

No. 1688. The American Security and Trust Co., a corporation, appellant, v. The District of Columbia. A. B. Browne and G. E. Hamilton for appellant; E. H. Thomas and F. H. Stephens for appellee.

No. 1689. The Union Trust Co., of the District of Columbia, etc., appellant, v. The District of Columbia. A. B. Browne and G. E. Hamilton for appellant; E. H. Thomas and F. H. Stephens for appellee.

No. 1690. Toledo Computing Scale Co., a corporation, appellant, v. Bushrod T. Garrison. H. W. Wheatley for appellant; C. F. Diggs for appellee.

No. 1692. District of Columbia, appellant, v. Sacket Duryee. E. H. Thomas and H. P. Blair for appellant; J. C. Gittings and F. J. Hogan for appellee.

No. 1693. Frederick Shortsleeves, appellant, v. The Capital Traction Co. J. J. Lightfoot for appellant; R. Ross Perry for appellee.

No. 1694. The Allemannia Fire Insurance Co., etc., appellant, v. The Firemen's Insurance Co., etc. Andrew Y. Bradley and Charles H. Bradley for appellant; W. F. Mattingly for appellee.

No. 1695. Robert B. Howison, appellant, v. Edmund E. Masson et al. O. B. Hallam and Wm. Hallam for appellant; E. A. Jones for appellees.

No. 1696. John McFarlane, appellant, v. Patrick Kirby. C. E. Emig for appellant; B. F. Leighton for appellee.

No. 1697. Golden Brown, an infant, etc., appellant, v. District of Columbia. E. S. Douglass and L. H. David for appellant; Henry P. Blair for appellee.

No. 1698. Thomas H. Pickford et al., appellants, v. Henry M. Talbott. H. E. Davis and Samuel Maddox for appellants; A. A. Lipscomb and W. M. Ellison for appellee.

No. 1699. Evalyn S. France, etc., appellant, v. Joseph M. Coleman et al. G. E. Hamilton, M. J. Colbert, and John J. Hamilton for appellant; W. H. Sholes and Bates Warren for appellees.

No. 1701. Jacob Keroes, appellant, v. Edward N. Richards. Hayden Johnson for appellant; Wm. O. Prentiss for appellee.

No. 1704. Alexander Porter Morse et al., executors, appellants, v. The U. S. of A. to the use of Mattie McC. Hine et al. John Selden for appellants; W. H. Robeson and W. H. Russell for appellees.

No. 1705. Theodosia Bell, appellant, v. The Central National Bank of Washington City. Edmund Burke for appellant; E. C. Brandenburg, C. A. Brandenburg, and F. W. Brandenburg for appellee.

No. 1706. Thomas R. Riley et al., appellants, v. Mary E. Thompson et al. S. T. Thomas for appellants; Leo Simmons for appellees.

No. 1709. Agnes B. Collins, executrix, etc., appellant, v. Charles Ridgeley McBlair et al. Chas. W. Pitts for appellant.

No. 1710. Capital Traction Co., a corporation, appellant, v. Samuel Brown. R. Ross Perry, R. Ross Perry, jr., and G. Thomas Dunlop for appellant; J. E. Taylor and Hayden Johnson for appellee.

No. 1711. Patrick T. Moran, appellant, v. Emil W. Wagner. R. F. Downing and H. W. Sohon for appellant; John B. Daish and J. D. Sullivan for appellee.

No. 1712. Wm. J. Carter, appellant, v. Allan L. McDermott, receiver, etc. C. H. Merillat and M. N. Richardson for appellant; C. A. Douglass for appellee.

No. 1714. E. Southard Parker et al., appellants, v. Lizzie C. Heald, executrix, etc. John Ridout for appellants; R. A. Ford and Wallace D. McLean for appellee.

No. 1715. Jane O'Dwyer, appellant, v. Northern Market Company et al. C. H. Merillat and C. F. Carusi for appellant; G. E. Hamilton, M. J. Colbert, J. J. Hamilton, and Arthur Peter for appellees.

No. 1716. The Irrigation Land and Improvement Co., appellant, v. Ethan Allen Hitchcock, secretary, etc. Frank L. Campbell for appellee.

No. 1718 (vide 1719). Francis T. Stone, appellant, v. J. W. Fowlkes. R. P. Hilliard for appellant.

No. 1719 (vide 1718). J. W. Fowlkes, appellant, v. Francis T. Stone. Leigh Robinson for appellant.

No. 1721. Mary Alice King McManus et al., appellants, v. Ambrose S. Lynch et al. Wm. G. Johnson and J. M. Carlisle for appellants; Jesse H. Wilson and Jesse H. Wilson, jr., for appellees.

No. 1722. John Morisi, appellant, v. Aulick Palmer, marshal, et al. T. J. Mackey for appellant; D. W. Baker and Geo. Francis Williams for appellees.

No. 1723. Eugene Gros, appellant, v. Clarence F. Norment et al. T. J. Mackey for appellant; G. E. Hamilton, W. J. Colbert, and J. J. Hamilton for appellees.

No. 1724. Robert W. Brown, executor, etc., appellant, v. Savings Bank of the Grand Fountain, U. O. T. R., a corporation. A. A. Birney and Joseph H. Stewart for appellant; W. J. Lambert and J. S. Easby-Smith for appellee.

#### SPECIAL CALENDAR.

1 (1655). The U. S. ex rel. Leonard Roache, appellant, v. Ethan Allen Hitchcock, Secretary of the Department of the Interior. R. O. Thompson and J. E. Laskey for appellant; D. W. Baker and F. L. Campbell for appellee.

2 (1672). In re John H. Adriaans, a member of the bar of the Supreme Court of the District of Columbia, appellant. J. S. Easby-Smith for appellant.

3 (1674). Fifth Congregational Church of Washington, D. C., appellant, v. Robert S. Bright, trustee, et al. W. C. Sullivan for appellants.

4 (1677). Harry J. McGowan et al., appellants, v. Ella Elroy et al. C. T. Hendler for appellants; Chas. Bendheim and Edmund Burke for appellees.

5 (1682). J. Barton Miller, appellant, v. John E. Payne, executor, et al. J. H. Wilson, J. H. Wilson, jr., and John Ridout for appellant; Smith Thompson, jr., and Chas. T. Hendler for appellees.

6 (1685). Harry J. Daly, etc., appellant, v. Lillie McCarthy. P. R. Hilliard for appellant; L. A. Bailey for appellee.

7 (1687). William Gordon Crawford, appellant, v. The United States of America. A. S. Worthington for appellant; D. W. Baker for appellee.

8 (1691). Adolph F. Lippard et al., appellants, v. Ida P. Humphrey et al. Chapin Brown and C. H. Bauman for appellants; B. F. Leighton and C. O. James for appellees.

9 (1700). Oscar B. Robinson, by Rosa Robinson, next friend, appellant, v. Aulick Palmer, United States Marshal for D. C. C. H. Merillat for appellant; D. W. Baker for appellee.

10 (1702). United States of America, appellant, v. Charles R. Evans et al. D. W. Baker for appellant; Thos. O. Taylor for appellees.

11 (1703). United States of America, appellant, v. Charles R. Evans et al. D. W. Baker for appellant; Thos. O. Taylor for appellees.

12 (1707). The U. S. of A. ex rel. Joseph E. Daly, appellant, v. Henry B. F. Macfarland et al. L. A. Bailey for appellant; E. H. Thomas and F. H. Stephens for appellees.

13 (1708). The U. S. ex rel. Sigmund Reinach, etc., appellant, v. George B. Cortelyou, Postmaster General, etc. L. A. Bailey and Ivan Heideman for appellant; H. H. Glassie for appellee.

14 (1713). District of Columbia, plaintiff in error, v. Horace Gant. E. H. Thomas for plaintiff in error.

15 (1717). Henry J. Depoilly, appellant, v. Aulick Palmer, U. S. Marshal in and for the District of Columbia. Walter P. Plumley for appellant; D. W. Baker for appellee.

16 (1720). District of Columbia, appellant, v. William F. Mattingly, trustee. E. H. Thomas for appellant; D. W. Baker and F. J. Hogan for appellee.

17 (1725). Charles E. Grant, etc., appellant, v. United States. J. A. O'Shea and H. I. Quinn for appellant; D. W. Baker for appellee.

18 (1726). Stephen H. Nash, plaintiff in error, v. District of Columbia. Geo. P. Hoover for plaintiff in error; E. H. Thomas for defendant in error.

#### PATENT APPEALS.

No. 347. Robert McKnight, appellant, v. Edwin C. Pohle. W. C. Pusey and Joshua Pusey for appellant; Augustus B. Stoughton for appellee.

No. 356. In the matter of the application of Robert Munn Dixon. J. L. Atkins, F. P. Warfield, and H. S. Duell for applicant; Fairfax Bayard for Commissioner of Patents.

No. 358. William B. Potter, appellant, v. John T. McIntosh. A. A. Buck and G. P. Whittlesey for appellant.

No. 359. The Union Distilling Co., appellant,

v. John R. Schneider. A. E. Wallace for appellant.

No. 360. In the matter of the application of Allie R. Welch. L. S. Bacon for applicant; Fairfax Bayard for Commissioner of Patents.

No. 361. Bernard H. Larkin, appellant, v. John D. Richardson. H. N. Low for the appellant.

No. 362. William L. Bliss, appellant, v. James F. McElroy. W. C. Jones and J. R. Edson for appellant.

No. 363. Henry F. Bechman, appellant, v. Louis W. Southgate. A. E. Dowell for appellant; Louis W. Southgate for appellee.

No. 364. Otho C. Duryea et al., appellants, v. John V. Rice, jr. F. M. Phelps for appellants; Fred. E. Tasker for appellee.

No. 365. Parker B. Cady, appellant, v. Frank W. Lovejoy. L. B. Wight for appellant; F. F. Church for appellee.

No. 366. The Schuster Co., appellant, v. Wm. H. Muller. A. E. Wallace for appellant; F. M. Phelps for appellee.

No. 367. In the matter of the application of John Hoey. T. Walter Fowler for applicant; Fairfax Bayard for Commissioner of Patents.

No. 368. John A. Kregg, appellant, v. William A. Geen. C. S. Davis and H. L. Osgood for appellant; F. F. Crampton for appellee.

No. 369. In the matter of the application of Paul L. T. Heroult. D. A. Usina, L. S. Bacon, and J. H. Milans for applicant; Fairfax Bayard for Commissioner of Patents.

No. 370. Charles W. Howell, jr., appellant, v. Edward B. Hess. F. C. Somes, Harold Binney, and Howell Bartle for appellant; W. W. Dodge for appellee.

No. 371. McLoughlin Brothers, appellants, v. Flinch Card Co. P. A. Bowen, jr., for appellants.

No. 372. The Cushman & Denison Mfg. Co., appellant, v. Clipper Mfg. Co. L. B. Wight for appellant.

No. 373. In the matter of the application of Charles B. Hodges. Bayard H. Christy for applicant; Fairfax Bayard for Commissioner of Patents.

No. 374. George R. Sherwood, appellant, v. Viggo Drewsen. C. O. Linthicum for appellant.

No. 375. Fishel, Nessler & Co., appellants, v. Rice & Hochster. James Hamilton for appellants.

No. 376. Fishel, Nessler & Co., appellants, v. Rice & Hochster. James Hamilton for appellants.

No. 377. In the matter of the application of American Circular Loom Co. Wm. S. Hodges for applicant; Fairfax Bayard for Commissioner of Patents.

No. 378. In the matter of the application of American Circular Loom Co. Wm. S. Hodges for applicant; Fairfax Bayard for Commissioner of Patents.

No. 379. In the matter of the application of Martin F. Volkmann et al. Perry B. Turpin for applicants; Fairfax Bayard for Commissioner of Patents.

No. 380. In the matter of the application of Harold M. Duncan et al. J. B. Church and Melville Church for the applicants; Fairfax Bayard for Commissioner of Patents.

No. 381. Henry J. Podlesak et al., appellants,

v. Benjamin McInnerney. O. Le Roy Parker for appellants.

No. 382. In the matter of the application of Chester McNeil et al. O. L. Sturtevant for the applicants; Fairfax Bayard for Commissioner of Patents.

No. 383. Edward E. Kilbourn, appellant, v. Emil A. Hirner. J. H. Whitaker for appellant.

No. 384. In the matter of the application of Charles W. Bray. Clarence P. Byrnes for the applicant; Fairfax Bayard for Commissioner of Patents.

No. 385. Walter J. Wickers et al., appellants, v. Burt F. Upham. J. H. Griffin for appellants; W. F. Rogers for appellee.

No. 386. Walter J. Wickers et al., appellants, v. Milton A. McKee. J. H. Griffin for appellants; W. F. Rogers for appellee.

No. 387. Walter J. Wickers et al., appellants, v. Milton A. McKee. J. H. Griffin for appellants; W. F. Rogers for appellee.

No. 388. Walter J. Wickers et al., appellants, v. Milton A. McKee. J. H. Griffin for appellants; W. F. Rogers for appellee.

No. 389. Walter J. Wickers et al., appellants, v. Milton A. McKee. J. H. Griffin for appellants; W. F. Rogers for appellee.

No. 390. Walter J. Wickers et al., appellants, v. Eugen Albert. J. H. Griffin for appellants.

No. 391. Hall & Ruckel, appellants, v. Frederick F. Ingram. Calvin T. Milans for appellants; L. S. Bacon and J. H. Milans for appellee.

No. 392. Albert L. Johnson, appellant, v. William Mueser. H. H. Simms for appellant; W. R. Baird for appellee.

No. 393. D. Auerbach & Sons, appellants, v. Hawley & Hoops. Joseph L. Levy for appellants.

No. 394. In the matter of the application of S. O. Herbst Importing Company. L. S. Bacon and J. H. Milans for applicant; Fairfax Bayard for Commissioner of Patents.

No. 395. Stephen P. Gibbons, appellant, v. Morris Peller. Robert B. Killgore for appellant.

No. 396. The Ross Shoe Manufacturing Company, appellant, v. A. A. Rosenbush & Co. O. E. Foster, for appellant.

No. 397. In the matter of the application of National Phonograph Company. Frank L. Dyer for applicant; Fairfax Bayard for Commissioner of Patents.

No. 398. Atwell J. Blackford, appellant, v. William H. Wilder; A. S. Pattison and Phillip Mauro for appellant.

No. 399. In the matter of the application of Thomas N. Kenyon. A. C. Paul and W. G. Henderson for applicant.

No. 400. Wm. A. Rogers, Limited, appellant, v. International Silver Co. F. P. Warfield and H. S. Duell for appellant.

No. 401. In the matter of the application of Walter J. Wickers et al. J. H. Griffin for applicants; Fairfax Bayard for Commissioner of Patents.

A provision in a life insurance policy, declaring it incontestable from date, is held, in *Reagan v. Union Mut. L. Ins. Co. (Mass.)*, 2 L. R. A. (N. S.), 821, to be void as against public policy, so far as it includes fraud in procuring the policy.

**Traps and Decoys.**

(New York Law Journal.)

The decision of the New York Court of Appeals in *People, &c., v. Jaffe* (78 N. E., 169), in which all but one of the judges sitting concurred, draws a somewhat arbitrary, but probably expedient and just, limitation upon the use of traps or decoys for the purpose of convicting would-be criminals. It appeared that a clerk stole goods from his employer under an agreement to sell them to accused, but before delivery of the goods the theft was discovered and the goods were recovered. Later the employer redelivered the goods to the clerk to sell to accused, who purchased them for about one-half of their value, believing them to have been stolen. It was held that the goods had lost their character as stolen goods at the time defendant purchased them, and that his criminal intent was insufficient to sustain a conviction for an attempt to receive stolen property, knowing it to have been stolen, prohibited by Pen. Code, section 550.

There was certainly much force in the ground taken by the Appellate Division that the case fell within the principle of the "Pickpocket Cases," holding that "one may be convicted of an attempt to commit a crime notwithstanding the existence of facts unknown to him which would have rendered complete perpetration of the crime itself impossible." It was specifically decided that in prosecutions for attempts to commit larceny from the person by pocket picking, it is not necessary to allege or prove that there was anything in the pocket which could be the subject of larceny. The Court of Appeals distinguishes the "Pickpocket Case" in the following language:

"The crucial distinction between the case before us and the pickpocket cases, and others involving the same principle, lies not in the possibility or impossibility of the commission of the crime, but in the fact that, in the present case the act, which it was doubtless the intent of the defendant to commit, would not have been a crime if it had been consummated. If he had actually paid for the goods which he desired to buy and received them into his possession, he would have committed no offense under section 550 of the Penal Code, because the very definition in that section of the offense of criminally receiving property makes it an essential element of the crime that the accused shall have known the property to have been stolen or wrongfully appropriated in such a manner as to constitute larceny. This knowledge being a material ingredient of the offense, it is manifest that it can not exist unless the property has in fact been stolen or larcenously appropriated. No man can know that to be so which is not so in truth and in fact. He may believe it to be so, but belief is not enough under this statute. In the present case it appeared not only by the proof, but by the express concession of the prosecuting officer, that the goods which the defendant intended to purchase had lost their character as stolen goods at the time of the proposed transaction. Hence, no matter what was the motive of the defendant, and no matter what he supposed, he could do no act which was intrinsically adapted to the then present successful perpetration

of the crime denounced by this section of the Penal Code, because neither he nor any one in the world could know that the property was stolen property, inasmuch as it was not, in fact, stolen property. In the pickpocket cases the immediate act which the defendant had in contemplation was an act which, if it could have been carried out, would have been criminal, whereas in the present case the immediate act which the defendant had in contemplation (to wit, the purchase of the goods which were brought to his place for sale) could not have been criminal under the statute, even if the purchase had been completed, because the goods had not, in fact, been stolen, but were, at the time when they were offered to him, in the custody and under the control of the true owners."

This decision recalls, among other cases, that in *People, &c., v. Conrad*, 102 App. Div., 566, affirmed by the Court of Appeals, without opinion, June 9, 1905. The cases are distinguishable on the ground that in the Jaffe case the act which the defendant intended to commit would not have been a crime if it had been consummated because of the failure of circumstances he supposed to exist. It is as if in the Conrad case the woman upon whom the defendant supposed he was attempting to perform an abortion had not actually been pregnant. Nevertheless, as above intimated, the difference between the present decision and the pickpocket cases is slender and technical, and its principal significance would seem to be the drawing of an arbitrary line against the extension of the policy of criminal traps and decoys.

**Carriers—Who Are Passengers?**

In *Fitzmaurice v. N. Y., N. H. & H. R. R.*, decided by the Supreme Judicial Court of Massachusetts in May, 1906 (78 N. E., 418), it was held, under Rev. Laws, chapter 111, section 223, of Massachusetts, providing that a railroad may make contracts for the conveyance of passengers at such reduced rates of fare as the parties may agree on, that one riding on a ticket procured at a reduced rate by false representations to the effect that she was a student at a certain school was not a passenger. The court said in part:

"Whatever rights she (plaintiff) had to be regarded as a passenger on the defendant's train she had acquired solely by the fraud which she had practiced upon the defendant. She had no right to profit by her fraud; she had no right to rely upon the consent of the railway company to her entering its train as a passenger, when she had obtained that consent merely by gross misrepresentations. Accordingly she was not lawfully upon the defendant's train; she was in no better position than that of a mere trespasser. This principle has been affirmed in other jurisdictions. Thus it has been held that a person traveling over a railroad on a free pass or mileage ticket which had been issued to another by name and was not transferable, was barred by his fraudulent conduct from recovering for a personal injury unless it was due to negligence so gross as to show a wilful injury. *Toledo, Wabash & Western Ry. v. Beggs*, 85 Ill., 80, 28 Am. Rep.,

613; *Way v. Chicago, Rock Island & Pacific Ry.* 64 Iowa, 48, 19 N. W., 828, 52 Am. Rep., 431. If the plaintiff had fraudulently evaded the payment of any fare, she certainly would not have become a passenger, and the defendant's utmost duty to her while she was upon its train would have been to abstain from doing her any wilful or reckless injury. *Condran v. Chicago, Milwaukee & St. Paul Ry.*, 67 Fed., 522, 14 C. C. A., 506, 28 L. R. A., 749; *Toledo, Wabash & Western Ry. v. Brooks*, 81 Ill., 245; *Chicago, Burlington & Quincy R. R. v. Mehlsack*, 121 Ill., 61, 22 N. E., 812, 19 Am. St. Rep., 17. But such a case can not be distinguished in principle from the case at bar, in which the plaintiff obtained her ticket at a reduced price by successfully practicing a fraud. The only relation which existed between the plaintiff and defendant was induced by her fraud; and, as was said by the court in *Way v. Chicago, Rock Island & Pacific Ry.* (*ubi supra*), she can not be allowed to set up that relation against the defendant as a basis of recovery. See, also, to the same effect, *Godfrey v. Ohio & Mississippi Ry.*, 116 Ind., 30, 18 N. E., 61; *McVeety v. St. Paul, Minneapolis & Manitoba Ry.*, 45 Minn., 268, 47 N. W., 809, 11 L. R. A., 174, 22 Am. St. Rep., 728; *McNeill v. Durham R. R.*, N. C., 44 S. E., 34, 67 L. R. A., 227.

"Nor is the plaintiff helped by the fact that the defendant's conductors had accepted the coupons of her ticket. This simply showed that she had succeeded in carrying her scheme to completion. There had been a similar acceptance by the conductor in *Way v. Chicago, Rock Island & Pacific Ry.* and *Toledo, Wabash & Western Ry. v. Beggs* (*ubi supra*). If the defendant's conductors did not know the real facts their acceptance of her coupons could have no effect; if they knew the facts and acquiesced in the plaintiff's wrongful purpose, this conduct could give her no additional rights. *McVeety v. St. Paul, Minneapolis & Manitoba Ry.* and *Condran v. Chicago, Milwaukee & St. Paul Ry.* (*ubi supra*).

"The cases relied on by the plaintiff do not support her contention. In *Galveston, Harrisburg & San Antonio Ry. v. Snead* (4 Tex. Civ. App., 31, 23 S. W. 277); *Ohio & Mississippi Ry. v. Muhling* (30 Ill., 9, 81 Am. Dec., 336), and *Austin v. Great Western Ry.* (L. R., 2, Q. B., 442), no question of fraud was involved. The same is true of *Foulkes v. Met. District Ry.* (4 C. P. D., 267, and 5 id., 157). In *Doran v. East River Ferry* (3 Lans., N. Y., 105), the plaintiff was allowed to recover on the ground that the defendant's servants had negligently failed to demand her fare, and that her injury was due to gross negligence. We have found no decision which would support a recovery under circumstances like those before us. The plaintiff's counsel very properly has not claimed that there was evidence of any such gross or wanton negligence as to entitle her to recover in spite of her rights being only those of a trespasser. *Banks v. Braman*, 188 Mass., 367, 74 N. E., 594."

The implied reservation of a right to subjacent support for the surface under a conveyance of the coal beneath the surface is denied in *Griffin v. Fairmount Coal Co.* (W. Va.), 2 L. R. A. (N. S.), 1115.

#### Liability for Unauthorized Surgical Operations.

[New York Law Journal.]

On February 27, 1905, we called attention to *Pratt v. Davis* in the Appellate Court of Illinois, First District (37 Chicago Legal News, 213), which decided that where a physician or surgeon, who has been authorized only to give medical treatment, or to perform a minor operation, exceeds his instructions and, upon his own responsibility, performs a very serious operation—in that case removing important organs of the patient—he is liable in damages. The court made its ruling of practical efficacy by holding that, although only nominal damages were shown, the allowance of punitive damages was proper. We said at the time that this case supplied a direct authority for a position that had already been taken by text writers and was quite generally supposed to be correct. The decision was much commented upon by legal periodicals, and, so far as our knowledge goes, without serious disapproval.

The recent decision of the Supreme Court of Michigan in *Bakker v. Welsh* (July, 1906, 108 N. W., 94), may be read in connection with the earlier Illinois case as exhibiting a salutary limitation upon the liability of surgeons. It appeared that a boy 17 years old, afflicted with a small tumor of the ear, for which he had taken treatment, went to a nearby city, accompanied by adult relatives, was examined by a surgeon, and went back home, agreeing to return later and hear the surgeon's diagnosis. On his return, accompanied at this time also by adult relatives, he arranged to have the tumor removed. While an anæsthetic was being administered preparatory to this operation the boy died. It was held that the surgeons performing the operation were not liable in damages to the boy's father, as administrator, because he had not consented to the operation.

The court said in part:

"We then come to the question: Are defendants liable in this action because they engaged in this operation without obtaining the consent of the father? Counsel for the plaintiff are very frank with the court, and say in their brief: 'We are unable to aid the court by reference to any decisions in point. We have devoted much time and research to this interesting question, but have been unable to find any decisions of a higher court either supporting or opposing the plaintiff's contention, and we will, therefore, have to be content by calling the court's attention to such general reasoning as leads us take the view herein contended for.' They then argue at length and with a good deal of force that, as the father is the natural guardian of the child and is entitled to his custody and his services, he can not be deprived of them without his consent. We quote: 'We contend that it is wrong in every sense, except in cases of emergency, for a physician and surgeon to enter upon a dangerous operation, or, as in this case, the administration of an anæsthetic, conceded to be always accompanied with danger that death may result, without the knowledge and consent of the parent or guardian. It is against public policy and the sacred rights we have in our children that surgeons should take them in charge without our knowledge and send to us a corpse as the first notice

or intimation of their relation to the case.' On the part of defendants it is contended: (1) Consent of the father was unnecessary. (2) The lack of consent was not the cause of the boy's death; hence not actionable. (3) That if it were, the action does not survive under the Death Act. (4) That the action, if any, is in the father, not in the administrator.

"We do not think it necessary to a disposition of the case to decide all of the defenses interposed by the defendant. The record shows a young fellow almost grown into manhood, who has been for a considerable period of time, while living with his father, afflicted with a tumor. He has attempted, while at home, to have it removed by absorption. It does disappear, but after a time it reappears. He goes up to a large city, and with an aunt and two sisters, all adults, submits to examination, receives some advice, and goes back to his father with an agreement to return later to receive the report of the expert who is to make the microscopic examination. He returns accordingly, and with at least some of his adult relatives arranges to have a surgical operation of a not very dangerous character performed. Preparations are made for its performance. There is nothing in the record to indicate that, if the consent of the father had been asked, it would not have been freely given. There is nothing in the record to indicate to the doctors, before entering upon the operation, that the father did not approve of his son's going with his aunt and adult sisters, and consulting a physician as to his ailment, and following his advice. We think it would be altogether too harsh a rule to say that, under the circumstances disclosed by this record, in a suit under the statute declared upon, the defendants should be held liable because they did not obtain the consent of the father to the administration of the anæsthetic."

The policy under which damages are allowed to be recovered by near relatives of a deceased person for an unauthorized autopsy upon the body is really punitive. The present case in Michigan was brought under the statute known as the "Death Act." Under that statute, as well as upon general principles regulating liability for causing death, we think the Michigan court properly denied recovery.

**Referee in Bankruptcy—Injunction—Proceedings in State Court.**—In *In re Berkowitz*, 16 Am. B. R., 251, it has been held that where a referee in bankruptcy, after full hearing, decides that certain personal property is no part of the bankrupt's estate, but belongs to his wife, he may not restrain by injunction the seizure of the property under a writ of replevin issued in an action by the trustee to recover possession.

**Discharge in Bankruptcy—Obtaining Property on Credit—Material False Statement in Writing.**—Under section 14b of the Bankruptcy Act, as amended, it has been held in *In re Harr*, 16 Am. B. R., 213, that the obtaining of property on credit by a bankrupt from any person upon a materially false statement in writing made to such person for the purpose of obtaining such property on credit, may be pleaded by any creditor in bar to the bankrupt's discharge.

**Will—Trust in Personalty in New York—Trustee in Bankruptcy of Cestui Que Trust no Title to Income.**—It has been held in *In re McKay*, 16 Am. B. R., 238, that a will, directing the executors to pay the income of certain sums bequeathed to testator's wife and son, to a designated bank as trustee, taking a certificate showing the purpose to which the same was to be applied, with directions to the trustee to pay the income and principal of the money so received by it, to the several legatees entitled thereto under the terms of the will, creates in New York a trust of personalty pure and simple, title to which is vested in the trustee, designated by the testator or trustee appointed by the court, and, being inalienable, does not pass to the trustees in bankruptcy of testator's wife and son.

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HON. HOLMES CONRAD,  
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On Legal Ethics.

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(United States Attorney for the District of Columbia)

On General Practice and Exercises in Pleading and Evidence.

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(Assistant Solicitor, State Department)

On Citizenship.

The thirty-seventh annual session opens on Wednesday, October 3, 1906, at 8.30 p. m., in the Law School Building, 506 and 508 E street northwest, at which time announcements will be made for the ensuing term. All interested are cordially invited to be present.

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## RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

## Legal Notices.

### FIRST INSERTION.

**Philip Walker, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Adelaide M. Shedd, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 15th day of October, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 26th day of September, 1906. FREDERICK G. STUTZ, by Philip Walker, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,151. Admn. [Seal.] 39-31

**Jesse H. Wilson and Jesse H. Wilson, Jr., Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Hiram R. Smith, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of September, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of September, 1906. B. T. JANNEY, 1671 31st st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,321. Administration. [Seal.] 39-31

**E. S. Mussey, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of California, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Jane M. Seavey, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of September, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of September, 1906. CORDELIA S. STERLING, care of Mrs. E. S. Mussey, Columbian Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,981. Administration. [Seal.] 39-31

**Alex. H. Bell, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of James R. Bryan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of September, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of September, 1906. WILLIAM J. YASTE, 102 First st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,929. Administration. [Seal.] 39-31

**Wm. H. Harvey, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Sarah Parker Gilbert, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of September, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of September, 1906. EDITH E. KING, 1708 S st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,868. Administration. [Seal.] 39-31

## Legal Notices.

A. H. Bell and Bates Warren, Solicitors

In the Supreme Court of the District of Columbia.  
Richard E. Cozzens et al. v. John F. McCormick et al.  
No. 28,435. Equity Doc. —.

The object of this suit is to enforce mechanics' liens against lots 601 to 611, both inclusive, in Jameson's subdivision of lots 1 and 2 in S. P. Brown's subdivision of Mount Pleasant as said first-named subdivision is recorded in the office of the surveyor of said District in County Book No. 20, page 24. On motion of the complainants it is, this 26th day of September, 1906, ordered that the defendant, John F. McCormick, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The

[Seal] Washington Law Reporter and The Washington Times before said day. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by S. McC. Hawken, Asst. Clerk. 89-3t

George C. Gertman, Attorney

In the Supreme Court of the District of Columbia,  
Holding Equity Court.  
William W. Godding, Trustee, Complainant, v. Hattersley W. Talbott et al. Defendants.  
Equity, No. 12,117.

Upon consideration of the report of Herman E. Gasch, trustee, filed herein, stating that he has sold, at public auction, subplot 18 in square 783, being premises 311 Massachusetts avenue, northeast, to Mary E. Stewart, for thirty-one hundred and seventy-five dollars (\$3,175.00), and has likewise sold the west 7.50 feet front, by depth of 100 feet, of lot 8, and east 12.50 feet front, by full depth thereof, of lot 4 in square 818, being premises 404 B street, southeast, to Elisha P. Taylor, Jr., for twenty-two hundred and twenty-five dollars (\$2,225.00), it is, by the court, this 24th day of September, A. D. 1906, ordered that said sales be ratified and confirmed unless cause to the contrary be shown on or before the 25th day of October, A. D. 1906. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said last-named date.

[Seal] HARRY M. CLABAUGH, Chief Justice.  
True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 89-3t

L. Cabell Williamson, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of James F. Brown, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 25th day of September, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of September, 1906. GEO. W. STUART, 11th st. Wharf, S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,908. Administration. [Seal.] 89-3t

Sheehy &amp; Sheehy, Attorneys

In the Supreme Court of the District of Columbia,  
Holding a Special Term as a Probate Court.  
In re Estate of Nora Flannery, Deceased.  
Adm. No. 12,569.

Michael A. Lynch, executor of the last will and testament of Nora Flannery, deceased, having reported that he has sold at private sale to Alexander Sewall for the sum of \$2,231 net, and all cash, lot numbered fifty-nine (59) in the subdivision made by John B. Turton, trustee, of square numbered one hundred and eighty (180), according to the plat of said subdivision as the same appears of record in the office of the Surveyor of the District of Columbia, in Book R. W., at page 8, together with the improvements, being premises known as No. 1612 Church street northwest. It is now, this 27th day of September, A. D. 1906, upon consideration of said report, by the court ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 29th day of October, A. D. 1906. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said last named date.

[Seal] HARRY M. CLABAUGH, Chief Justice. A true copy. Attest: James Tanner, Register of Wills. 89-3t

## Legal Notices.

Baker, Sheehy &amp; Hogan, Solicitors

In the Supreme Court of the District of Columbia.

Sarah A. Gray Cochran et al., Complainants, v. Unknown Heirs, Alienees, or Devisees of Eliza Hamilton et al., Defendants. No. 28,210. Equity Doc. 58.

The object of this suit is to quiet title by adverse possession in the complainants to the following described property, situate in the District of Columbia, to wit: lot numbered thirty-three (33), in square numbered seven hundred and thirty-two (732), and for sale of said lot and partition of proceeds among complainants. On motion of the complainants, it is, this 26th day of September, 1906, ordered that the defendants, the unknown heirs, alienees, or devisees of Eliza Hamilton, unknown heirs, alienees, or devisees of Samuel Gant, unknown heirs, alienees, or devisees of Martha Sewell, unknown heirs, alienees, or devisees of Josephine Robertson; Maria W. Watterston, M. K. Watterston, Roderick A. Watterston, Charles Watterston, Rebecca Machoner, and Sarah M. Holcomb, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and the Washington Post, being newspapers published in the city of Washington, District of Columbia. By the Court:

[Seal] HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 89-3t

## SECOND INSERTION.

[Filed July 20, 1906. J. R. Young, Clerk.]

W. E. Poulton, Jr., Solicitor

In the Supreme Court of the District of Columbia.  
Cotter T. Bride v. The Unknown Heirs, Devisees, and Alienees of James Neale, "of Bennet," Deceased.  
Equity No. 36,148. Doc. No. 58.

On motion of complainant, it is, this 20th day of July, A. D. 1906, ordered that the defendants, the unknown heirs, devisees, and alienees of James Neale, "of Bennet," deceased, cause their appearance to be entered herein, on or before the first rule day, occurring three (3) months after the day of the first publication of this order; otherwise this cause will be proceeded with as in case of default. The object of this suit is to declare the title of complainant to lot numbered two (2) in square numbered five hundred and ninety-nine (599), in the city of Washington, in the District of Columbia, to be good in fee simple by adverse possession.

[Seal] By the court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 88 8t

Levi H. David, Solicitor

In the Supreme Court of the District of Columbia.  
Camille Jacobs et al., Complainants, v. Irving Jacobs, Defendant. Doc. No. 58. Eq. No. 26,475.

The object of this suit is to obtain the partition, by sale, among the parties to this cause, of the equities of the following-described parcels of real estate in the District of Columbia: The west 4 ft. of lot 6 and the east 14 ft. front of lot 7 by full depth, in block 34, Columbia Heights; also the 16 and 79-100 ft. front on 14th st. extended, next north of the south 16 and 79-100 ft. of lot 14, in block 86, Columbia Heights, by a depth of 137 ft.; also part lot 4, in block 22, John Sherman Trustee's subdivision, known as Columbia Heights, as per plat rec. in surveyor's office, D. C., liber Governor Shepherd, folio 137. The marshal having returned the subpoena against said defendant "not to be found," and it having been proven by affidavit filed herein to the satisfaction of the court that said defendant is a non-resident of the District of Columbia, on motion of complainants, by their solicitor, it is, by the court, this 21st day of September, 1906, ordered that the defendant, Irving Jacobs, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Times before said day. HARRY M. CLABAUGH, Chief Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 88-3t

**Legal Notices.****Thos. Walker, Solicitor**

In the Supreme Court of the District of Columbia,  
**Rebecca S. Nichols v. John Harrison Nichols et al.**  
 No. 26,479, Equity Doc. 58.

The object of this suit is to have partition, by sale, of lots seven (7) and eight (8), in the subdivision of John Henry Nichols' land at Brightwood, District of Columbia, being part of a tract of land called Peters' Mill Seat, said property being bounded on the 14th Street Road, and the land belonging to A. White and that of Dr. Charles Stone, said lots being more fully and accurately described in the plat of the aforesaid subdivision by B. D. Carpenter, surveyor, dated July 13th, A. D. 1902; and the said subdivision being further described as the tract of land conveyed by deed dated August 31st, A. D. 1892, by Walter M. Moreland et al., to John H. Nichols, said deed being fully recorded in liber 1803, at folio 88, of the land records of the District of Columbia. On motion of the complainant, it is, this 18th day of September, 1906, ordered that the defendants, John Harrison Nichols, Catherine Nichols, Howard E. Nichols, Nellie Nichols, Clarence H. Nichols, Adelaide Nichols, Effie J. Curry, Curry, Lulu E. Fernandez, and Mary Nichols, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Bee before said day. HARRY M. CLAUBAUGH, Chief Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 38-31

**Ralston & Siddons, Solicitors**

In the Supreme Court of the District of Columbia,  
**Lucy M. Clarkson et al. v. Charlotte Maurice Touzalin.**  
 Equity No. 26,453, Doc. 58.

The object of this bill is to obtain partition by sale of lot twenty-one (21), in block three (3), in Kalorama Heights, as per plat recorded in liber, County No. 7, folio 31, of the surveyor's office of the District of Columbia. It appearing to the court that summons for the said defendant has been duly issued and returned not to be found and her non-residence being further proved to the satisfaction of the court by affidavit, on motion of Ralston & Siddons, complainant's solicitors, it is, this 18th day of September, 1906, ordered that the defendant, Charlotte Maurice Touzalin, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and the Evening Star, newspapers of the District of Columbia. HARRY M. CLAUBAUGH, Chief Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 38-31

**Ralston & Siddons, Attorneys**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Curtis J. Hillyer, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 18th day of September, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of September, 1906. ANGELINE HILLYER, 1613 21st st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,861. Administration. [Seal.] 38-31

**Eugene A. Jones, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Mary E. Doyle, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of September, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of September, 1906. MARY E. DOYLE, 1827 Benning Road, N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,922. Administration. [Seal.] 38-31

**Legal Notices.****Irwin B. Linton, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Robert H. Messer, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 8th day of October, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 18th day of September, 1906. JAMES A. MESSER, by Irwin B. Linton, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,425. Administration. [Seal.] 38-31

**Leon Tobriner, Attorney**

**In the Supreme Court of the District of Columbia.**

**Mary Maguire v. Thomas Diggins et al.**  
 No. 24,565, Equity.

Samuel Maddox, Francis H. Stephens, and Leon Tobriner having reported the sale to Dorothy M. Brown of lot numbered fifteen (15), in Samuel Davidson's subdivision of lots in square one hundred and ninety-eight (198), as per plat recorded in liber N. K., folios 29 and 30, of the records of the office of the surveyor of the District of Columbia, being the west twenty-four (24) feet four and one-half (4½) inches by the full depth thereof of said lot fifteen (15), in the City of Washington, District of Columbia, for the sum of two and thirty-eight hundredths dollars (\$2.38) per square foot, aggregating the sum of seven thousand three hundred and eleven and thirty-six hundredths dollars (\$7,311.36), it is, this 14th day of September, A. D. 1906, ordered that the said sale be and it is finally ratified and confirmed unless cause to the contrary be shown on or before the 15th day of October, A. D. 1906. Provided a copy of this order be published once a week for three successive weeks before said last mentioned day in The Washington Law Reporter and The Washington Post. By the Court: ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 38-31

**Birney & Woodard, Attorneys**

**In the Supreme Court of the District of Columbia.**

**John F. Javins, Plaintiff, v. E. E. Gray, otherwise Edward E. Gray, Defendant.**

At Law. No. 48,718.

The object of this suit is to recover \$581.80, with interest on \$561.80 from July 1, 1906, for money advanced by the plaintiff to the defendant, and for money paid by the plaintiff for the use of the defendant, at his request, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. On motion of the plaintiff, it is, this 14th day of September, A. D. 1906, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, excluding Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published in The Washington Law Reporter and The Washington Post once a week for three successive weeks before the return day. [Seal] ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk; Harry Bingham, Asst. Clerk. 38-31

**F. Snowden Hill, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William H. McElfresh, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 10th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 17th day of Sept., 1906. JOHN J. McELFRESH, 809 M st. N. W.; W. BLADEN JACKSON, 607 13th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,769. Admn. [Seal.] 38-31

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### Mr. Justice Charles H. Robb.

The vacancy on the Court of Appeals of this District caused by the resignation of Mr. Justice Duell has been filled by the appointment of Hon. Charles H. Robb, of Vermont. The oath of office was administered to him on Monday, October 8, 1906, by Mr. Chief Justice Shepard, the ceremony being witnessed by a large company, including the judges of our local courts, members of the bar, and friends of the new justice, who was the recipient of many congratulations. Justice Robb immediately entered upon the discharge of his duties.

Mr. Justice Robb is a native of Vermont, and is in the 39th year of his age. He was admitted to the bar of that State in 1891, and located at Bellows Falls, where he practiced his profession for about ten years. He was elected States attorney for Windham County in 1896, and his efficient discharge of the duties of that office brought him into public notice. About five years ago he removed to this District on receiving the appointment of inheritance tax attorney, and in that capacity was called upon to determine many important questions. Subsequently he was appointed a special attorney in the Department of Justice. His abilities won speedy recognition, and when a vacancy occurred in the office of Assistant Attorney-General for the Post Office Department he was promoted to that position. He has had a brilliant career as Assistant Attorney-General, and conducted the investigation and prosecution of the case against Senator Burton, making the

argument for the Government before the Supreme Court of the United States, which affirmed the judgment of conviction entered by the trial court.

In the several capacities in which he has served as one of the law officers of the Government, Justice Robb has displayed abilities of a high order; and those who best know him and his work are confident he will fill the high office to which he has been elevated not only with honor to himself but to the entire satisfaction of the bar and the community.

### Tribute to Edwin B. Hay.

An adjourned meeting of the District Bar Association was held on Friday afternoon, October 5, 1906, to pay appropriate tribute to the memory of Edwin B. Hay. The meeting was called to order by Mr. Wm. F. Mattingly, president of the association, and Mr. A. S. Worthington was requested to preside. Mr. Charles W. Claggett acted as secretary.

Brief addresses expressing fitting appreciation of Mr. Hay's worth as a man and lawyer were made by Mr. W. H. Singleton, Mr. John Paul Earnest, and Mr. S. R. Bond, who, with Mr. W. H. Dennis, Mr. A. B. Duvall, Mr. Chapin Brown, Mr. Charles H. Oragin, and Mr. Jesse H. Wilson, constituted the committee to draft resolutions. The memorial and resolutions adopted were in part as follows:

"As a boy, Mr. Hay evinced those qualities of heart and mind which time but ripened and matured. His sweetness of temper and kindness of disposition endeared him to boyish associates, who remained friends through life. Possessing an almost exuberant fancy, a profusion of imagery, and a never-failing vocabulary, he was always resourceful and happily responded to any call upon him. Witty, yet humorous, skilled in repartee, yet tender-hearted, neither gibe nor satire passed his lips.

"To those who knew him, even though slightly, there must remain always the remembrance of a personality characterized by a pervading spirit of cheerfulness and good nature, a love of all mankind, the spirit of humanity which included all phases of life within its range. He was the benignant friend of all who had occasion to know him.

"Stricken down in the vigor of manhood, many years of life apparently before him, he has been called hence amid the sorrow and lament of a great throng of all ages and ranks. The members of the local bar, to express their esteem and bereavement, have adopted the following:

"Resolved, That in the death of Edwin B. Hay, the people of the District of Columbia have sustained the loss of a faithful fellow citizen, who was true to his civic duties; a wide circle of friends and acquaintances one endeared to them by many lovable qualities of heart and

mind; his family a loving husband and tender father, and the bar, a conscientious and faithful member.

"Resolved, That a copy hereof be sent to his family, and that the Supreme Court be requested to spread this memorial and resolution upon the minutes of the court in general term."

—♦—

**Personal Injuries—Damages—Value of Earnings and Income.**

In *Kronold v. City of New York*, decided October 2, 1906, by the Court of Appeals of New York, and reported in the *New York Law Journal*, it was held that in an action for personal injuries sustained by one whose income depended largely upon his personal efforts and activity in his business, which he carried on alone, the plaintiff may recover, as an item of damages, the value of his earnings and income, even though the investment involved but a small amount of capital. Exclusion of evidence of the value of his personal earnings and income in such a case is held to be reversible error. The court in its opinion said:

"This action was brought to recover damages for personal injuries sustained by the plaintiff and alleged to have been caused by the negligent failure of the defendant to keep in proper repair a crosswalk at the intersection of Elm and Walker streets, in the Borough of Manhattan. For the purposes of this discussion we may assume, although we do not decide, that the defendant's alleged negligence and the plaintiff's freedom from contributory negligence were sufficiently established to present questions of fact to be disposed of by a jury, and we shall confine our discussion to the single question whether the learned trial judge properly refused to submit to the jury the plaintiff's alleged loss of earnings or income as an element of the damages which should be awarded to him if he is entitled to a verdict.

"At the close of the evidence the learned trial judge announced that he would not submit to the jury the plaintiff's claim for loss of income, because it appeared from his own testimony that he had \$1,000 of capital invested in his business, and there was no evidence to show how much of his income had been derived from his invested capital and how much from his personal efforts. When this ruling had been made plaintiff's counsel asked permission to put the plaintiff on the stand for the purpose of interrogating him as to the reasonable value of his services, or what compensation similar services would command. This request was refused and plaintiff's counsel took an exception. The case was then submitted to the jury under a charge in which the income or earnings of the plaintiff from his personal efforts was distinctly excluded from consideration as an element of any damages which might be awarded to him. At the conclusion of the main charge plaintiff's counsel requested the court to instruct the jury that it was for them to consider 'the nature of the business in which the plaintiff was engaged, its extent and the particular

part therein transacted by him,' and the court replied: 'I charge that with the statement that you are not to take into consideration his earnings as testified to by him, for the reason that he stated he had capital invested.' To this modification of his request the plaintiff's counsel excepted, and later he excepted generally to that portion of the charge in which the jury were instructed to disregard the testimony of the plaintiff as to his earnings in his business. These exceptions, when considered in the light of the evidence, are sufficiently definite, we think, to present for our review the question whether the rulings of the court above adverted to present legal error or not, and a brief synopsis of the plaintiff's evidence on this subject will serve to fix the point of view from which that question should be considered.

"Prior to the accident the plaintiff had been engaged in the business of selling Swiss embroideries. He took orders from shirt-waist manufacturers, Vantine, and others who dealt in such articles. These sales were made from designs or drawings procured from sample embroideries. No considerable stock of these embroideries seems to have been carried by the plaintiff, and the capital which he had invested in his business was approximately \$1,000. His office expenses, which included rent and the wages of an office boy, did not exceed \$600 a year. His net income was about \$3,000 a year, and it is fairly to be inferred from his testimony that this was derived chiefly from his personal efforts as a canvasser or salesman, for he stated: 'I really made my living only with my legs and maybe a little head also, but most my legs; of course, I have been laid down; then I had to stop; I did not employ any salesmen or drummers or anything like that; I was myself a salesman and a drummer; out of town sometimes.' When we add to this brief but comprehensive statement the suggestion that the amount of the plaintiff's income, as compared with the so-called capital invested, is of itself an almost conclusive argument against the theory that the plaintiff was engaged in a business which yielded profits from capital invested, it will readily be seen that this case should be classed as one involving the investment of an insignificant capital as a mere incident or vehicle to the performance of services almost, if not quite, purely personal in their nature. We so regard the case on principle, but this view is also well sustained by authority. In *Pill v. B'klyn Heights R. R.* (6 Misc. Rep., 267, aff'd 148 N. Y., 747), where the plaintiff was a custom corset-maker who maintained a workshop and employed two girls to help her, it was held competent to prove loss of earnings resulting from the injuries on account of which the suit was brought. In *Ehrgott v. Mayor, &c., of New York* (96 N. Y., 264), also an action to recover damages for personal injuries, the plaintiff was a book canvasser and was permitted to show his earnings prior to his injuries. There the court, speaking through the late Earl, J., illustrated the plaintiff's position by likening it, so far as personal earnings were concerned, to the occupations of the lawyer, the physician, and the dentist, whose earnings are the result of their professional skill without capital invested. The lawyer has to have books, and if he is busy

enough he employs clerks to assist him. The physician puts money into instruments, books, and medicines. The dentist invests in gold leaf, artificial teeth, and tools. And yet their incomes which, to some extent at least, are the product of such investments and expenditures, are classified as personal earnings, the loss of which must be considered as an element of damages in actions for personal injuries. To the same effect are *Simonin v. N. Y., L. E. & W. R. R.* (36 Hun, 214), where the plaintiff was a teacher of French; *Nash v. Sharp* (19 Hun, 365), where the plaintiff was a dentist; *Lynch v. B'klyn City R. R.* (5 N. Y. Supp., 311, aff'd 123 N. Y., 657), the case of a midwife; *Thomas v. Union Ry.* (18 App. Div., 185), where the plaintiff performed services as gauger for a copartnership of which he was a member; *Waldie v. B'klyn Heights R. R.* (78 App. Div., 557), the case of a licensed pilot, and numerous other cases involving a variety of occupations, in which the element of personal earnings has been held to predominate over a small and purely incidental or supplemental investment of capital.

"The cases above cited, as well as the case at bar, are clearly distinguishable. we think, from *Masterton v. Village of Mt. Vernon*, 58 N. Y., 391; *Marks v. L. I. R. R.*, 14 Daly, 61; *Boston & Albany R. R. v. O'Reilly*, 158 U. S., 234, and other cases relied upon by counsel for the respondent and the courts below, because these latter decisions are all based upon facts which disclose such a preponderance of the business element over the personal equation, or such an admixture of the two, that the question of personal earnings could not be safely or properly segregated from returns upon capital invested in considering the damages to which the several plaintiffs claimed to be entitled.

"In the case at bar there was not only evidence which tended properly to show that the plaintiff had sustained damages through loss of personal services, but competent evidence bearing upon the same subject was excluded, and we think the refusal of the learned trial court to submit to the jury the former, as well as its ruling excluding the latter, constitutes legal error which entitles the plaintiff to a new trial.

"In this view of the case we deem it unnecessary to discuss other questions that may not be again presented.

"The judgment below should be reversed and a new trial granted, with costs to abide the event."

**Jurisdiction of Bankruptcy Court**—"Principal Place of Business" of Foreign Corporation.—Where a New Jersey corporation operating factories, mills, or mines in various States has its principal office in the city of Boston, where the supreme direction and control are exercised and the bulk of sales is negotiated and bills sent out and payments received, where, also, its directors meet, its books of account are kept and its general correspondence conducted, held, in *Matter of Matthews Consolidated Slate Co.*, 16 Am. B. R., 407, that it is subject to the jurisdiction of the Bankruptcy Court in the District of Massachusetts, as its "principal place of business" must be held to be therein.

## Court of Appeals of the District of Columbia.

CHARLES W. HOWELL, JR.,

v.

EDWARD B. HESS.

Patent Appeal No. 370. Decided October 11, 1906.

HEARING on motion to strike out certain parts of transcript of record. Granted.

*Mr. W. W. Dodge* for the appellee, for the motion.

*Mr. Harold Binney, Mr. Howell Bartle, and Mr. F. C. Somes* for the appellant, opposed.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

The appellee has filed a motion to strike from the transcript of the record certain parts thereof containing fifteen copies of patents, several briefs filed in the Patent Office by the parties in the course of the hearings therein, and decisions of the Examiner of Interferences upon motions for the dissolution of the interferences. It appears that interferences were declared not only between Howell and Hess, but between one Secor and another, in respect to certain of the claims. The appellee and Secor moved to dissolve the interferences. The ground of appellee's motion was non-interference in fact, that of Secor was the non-patentability of the issue. Both motions were opposed by Howell, and were denied. The parties acquiesced in the decision on the motions, and Secor has since dropped out of the case.

Clearly, the briefs of counsel filed in the Patent Office are not parts of the record, and we are unable to perceive the relevancy of the action on the motions to dissolve the interference, to the question of priority of invention. As a general rule, collateral questions of the kind have not been regarded as proper matters for consideration in the determination of the question of priority. Conceding, for the purposes of this case, that there may be exceptional cases in which such questions can be properly considered, it is evident that no such condition exists in this case. The appellant was successful in his opposition to the several motions and has no right to complain of the decisions thereon. The losing parties have acquiesced and one of them is no party to this appeal. As the appellant pays the cost of the transcript and of printing the same, and no award of costs is made by this court in cases of this character, inquiries have not usually been made in respect to the papers incorporated therein; and motions to incorporate additional papers and proceedings have ordinarily been granted where there was any reasonable ground to suppose that they might have any bearing upon the questions appealed.

It is important, however, in the prompt disposition of appeals that record for submission shall not be incumbered with unnecessary recitals, and when it is made plain that such is the case they will be stricken out.

As it is manifest that the papers recited in the motion to strike out have no relevancy to the question to be determined, the motion will be granted.

It is so ordered.



**Supreme Court of the District of Columbia.****BETTIE WEST, PLAINTIFF,****v.****THE METROPOLITAN LIFE INSURANCE  
COMPANY, DEFENDANT.****LIFE INSURANCE; BREACH OF WARRANTY.**

In an action on a policy of life insurance, certain statements made by the insured in her application for insurance, held to amount to a warranty and to constitute a part of the contract, and such statements being false the policy could not be enforced.

At Law, No. 46,965. Decided October 12, 1908.

**HEARING** upon an agreed statement of facts in an action upon a policy of life insurance. Judgment for defendant.

*Mr. J. B. Archer* for plaintiff.

*Messrs. Berry & Minor* for defendant.

**Mr. Justice BARNARD** delivered the opinion of the Court:

In this case the plaintiff brought her action before a justice of the peace upon a policy of life insurance issued by the defendant company upon the life of Ann Sanford, and obtained judgment in the justice's court for the amount of one hundred twenty-seven dollars and fifty cents (\$127.50), with interest from December 1, 1903; and from that judgment the defendant company has appealed to this court.

It is claimed by the counsel for the defendant that the party insured warranted and agreed that the facts stated by her in her application were strictly correct and wholly true, and that they should form the basis and become a part of the contract of insurance, and that the said policy was issued upon that basis. Notwithstanding such warranty and agreement upon the part of the party insured, they allege that what was stated in the application, that the said Ann Sanford had never had cancer or other tumor, and that she had not been under the care of any physician within two years prior to the date of her application for insurance, to wit, November 9, 1903, was not true.

The agreed statement of facts signed by counsel in submitting the case to the court without a jury, shows that the insured was treated by a physician in July or August, 1902, at Saratoga, New York, for bronchitis; and that she had before that time been treated for fibroid tumor by a physician in Baltimore, and had been advised to have the tumor removed; that the insured was operated upon in the Columbia Hospital, Washington, D. C., October 3, 1903, for fibroid tumor, by Dr. J. Wesley Bovee; and that said physician is of the opinion that the disease must have existed for about five years prior to that time. The said insured died after the said operation on October 9, 1903.

The question presented for the court to determine is this: Do the agreed facts as to the contents of the application made for insurance, and the language of the policy issued upon said application, when considered in the light of the other evidence in the case, constitute a valid defense to the action? Counsel for the defendant claim that these facts show that there was a warranty, and that the facts warranted in the

application were false, so that the warranty was broken; and that, therefore, the contract of insurance became invalid, and that such must be the case under the law, although the party insured might have been ignorant of the existence of the disease or tumor at the time she made her application for insurance.

In this case there is no question as to what the applicant for insurance stated in her application, a copy of which was annexed to the policy, and there is no question as to the cause of her death. The question arises as to the duration of the said disease; as to whether or not it did exist at the time the application was made; and as to whether or not she had been under the treatment of a physician within the time stated.

From the depositions in the case, as well as from the stipulation of parties as to the facts, I find that in these respects the said statements in the application were false; and I hold, as matter of law, that the said statements amounted to a warranty, and constituted a part of the contract of insurance and formed the basis of it; and being false, that the contract can not be enforced.

In the case of *Jeffries* against *The Life Insurance Company*, 22 Wallace, 47, the Supreme Court of the United States holds that where it is expressly covenanted as a condition of liability that the statements and declarations made in an application for insurance are true, and that the truth of such statements forms the basis of the contract; if it is proven afterward that said statements and declarations in the application were not true, that the contract of insurance is avoided. That the want of honesty on the part of the applicant in stating the truth amounts to such a deception as to render the contract of insurance absolutely void.

In the case of *The Aetna Life Insurance Company* against *France et al.*, 91st United States, 510, the subject was again considered, and the ruling in *Jeffries* against *The Life Insurance Company* was affirmed.

The party insured, in her application as shown in this case, stated that she had not been under the care of any physician within two years prior to the date of said application; and also, that she had never had bronchitis or cancer or other tumor. She also stated in said application the following:

"And I further declare, warrant, and agree that the representations and answers made above are strictly correct and wholly true; that they shall form the basis and become part of the contract of insurance if one be issued; and that any untrue answers will render the policy null and void."

The statement of facts shows that three or four months before the signing of said application the said insured had been treated by a physician in Saratoga for bronchitis, so that in respect to this question there can be no doubt that the statement in the application was false, and must have been known to be such when made. This in itself would be sufficient under the authorities to avoid the contract. Such was the holding in the case of *The Metropolitan Life Insurance Company v. McTague*, 49th New Jersey Law, 587.

In that case the representation was that the assured had not consulted a physician, or been



prescribed for by a physician, within a certain time, whereas the fact was found to be that the assured had consulted or been prescribed for by a physician, for a cold, within the time named; and the court said, "so material does such a representation seem to be to the contract proposed by the application, that in my judgment, if made falsely and knowingly, it would avoid the contract;" but in the case named, the court further held that the materiality of the representation was not in question, if its truth was warranted, and whether material or not the warranty, when false, avoided the contract.

I find, as matter of fact, that in at least three respects the statements contained in the application were false, namely; that the insured had never had bronchitis; that she had never had cancer or other tumor; and that she had not been under the care of any physician within two years prior to her application. Either of these false statements, under the terms of this application and policy, would be sufficient, in my judgment, to avoid the contract of insurance, and I must, therefore, enter a judgment for the defendant.

#### Fire Insurance—Property Covered.

In *Evanston Golf Club v. Home Insurance Co.*, decided by the Kansas City Court of Appeals, Missouri, in June, 1906 (95 S. W., 980), it was held that where the owners of a club-house procured from the insurer thereof a permit to make alterations and repairs, including the building on of a new kitchen in place of one attached to and a part of the club-house, and in making such repairs the old kitchen was detached and removed a distance of 100 feet, and at a time when it had not been determined whether it would be reattached was destroyed by fire, it was not covered by the policy. The court said in part:

"In *O'Keefe v. Insurance Co.* (140 Mo., 558, 41 S. W., 922, 39 L. R. A., 819), Judge Gannt said that 'over thirty years ago this court, in *Nave v. Insurance Co.* (37 Mo., 430, 90 Am., Dec., 394,) held that 'a policy of insurance upon a building is an insurance upon the building as such, and not upon the material of which it is composed.'" That statement is applicable to the facts of this case. The final disposition of the portion of the building removed was not determined when it was destroyed. It was not determined that it would be reattached to the main building. It was, in fact, no longer a part of the thing insured, a fact which distinguishes this case from those cited by plaintiff. Borrowing a suggestion of defendant's counsel, is it not plain that if, after the new kitchen had been built, the whole building had been destroyed by fire, but the old kitchen, standing 100 feet away, had been left unharmed, plaintiff would have claimed a total loss? It is not reasonable to suppose it would have been content to have had the value of the old kitchen deducted. This case does not present, as plaintiff seems to suppose, a question of increase of the risk. The question is whether a part of the club-house, as it was at time of the fire, was burned."

### United States District Court.

D. OREGON.

UNITED STATES

v.

JOHN J. COLLINS.

CONTEMPT; PRODUCTION OF DOCUMENTS; PARTNERSHIP BOOKS; CLAIM OF PRIVILEGE.

A showing that books of account which a witness is required by a subpoena to produce are the books of a partnership of which he is a member and are not in his custody except as a member of the firm, without more, affords no ground of his refusal to produce them.

A claim of privilege under the fifth constitutional amendment is insufficient to excuse the failure to produce books as required by a subpoena duces tecum where it is based solely on the statement of the person making the claim that the books if produced will constitute evidence which will tend to incriminate him, and he has not, moreover, been sworn as a witness. To entitle him to make such claim he must have been sworn as a witness, and must satisfy the court that there is reasonable ground therefor by something further than his mere assertion.

(S. c., 145 Fed., 709.)

John J. Collins was subpoenaed to appear in court and testify as a witness in behalf of the United States, and was required by such subpoena to bring with him each and every record, book, paper, file, or instrument, or other record in his possession or under his control, showing, or containing, or having therein any matter or thing pertaining or relating to the business of E. Dorgan, or Francis Devine, or Dorgan & Devine, associated together either with him, the said Collins, or separately, within and during the years 1902 and 1903, whether made or entered by him, or by Dorgan or Devine, or either or any of them, in respect of said business. He appeared in obedience to the subpoena (the purpose of which, it should be said, was to procure his testimony before the grand jury, now in session), but has refused to bring with him any record, book, paper, file, or instrument called for. The witness is now here to answer the complaint of the district attorney, and show cause why he is not in contempt of the court in refusing to obey such subpoena. He shows that E. Dorgan, Francis Devine and himself were at the dates mentioned, and now are, partners doing business at Albany, Ore., under the firm name of "E. Dorgan & Co."; that the records, books, etc., of such firm are the only records of the nature called for of which he has any knowledge, and that the same were not at the time of the service of the subpoena, and are not now, in his custody, except as one of the members of the firm; and, further, that such books, etc., if produced, will constitute such evidence as would tend to incriminate him, the said Collins, and render him liable to prosecution and conviction for a crime against the United States; and that, under the fifth amendment to the Federal constitution, he claims the privilege accorded him of refusing to produce such records, books, etc. Thereupon, he prays a dismissal of the proceeding.

W. C. Bristol, United States attorney.

L. M. Curl and Percy R. Kelly for defendant.

WOLVERTON, District Judge (after stating the facts).—Two reasons, it will be seen, are as-

signed by Collins why he should not be required to bring the records, books, etc., called for by the subpoena: First, that they are in the hands of a partnership, of which he is a member only; and, second, that if produced they will constitute evidence the tendency of which will be to incriminate him or to render him subject to prosecution for a crime against the United States. Of these, in their order, it is familiar law that every member of a firm is an agent thereof; but not only this, he is ordinarily as much entitled to the records, books, files, etc., of the firm as any other member; and the simple fact, as alleged here, in effect, that the records, etc., are in the possession and under the control of the firm does not hinder the defendant in the least from bringing them away. He says they are not under his control or in his custody except as one of the members of the firm; thus leaving the palpable inference that they are under the control of the firm—he having as much right to their possession as any other member. Such a state of facts manifestly does not, without further showing that he is unable for some pertinent reason to bring them, excuse his refusal. The firm has not denied him the right, or taken the books and records away out of his reach, and being a member, he is able to bring them for aught that is shown.

As to the second reason urged why defendant should be excused from producing the documents, the showing made is manifestly insufficient, for two reasons: First, the act solely of bringing the papers, conceding that they do contain matters tending to the witness's incrimination will not subject him to prosecution and conviction of a crime; and second, his mere statement that such records and papers do contain matters that, if disclosed, would tend to his incrimination, is insufficient to excuse him. The constitutional guaranty under the fifth amendment is that "no person . . . shall be compelled, in any criminal case, to be a witness against himself." It has been determined that the object of this guaranty, broadly construed, "was to insure that a person should not be compelled, when acting as a witness in any investigation, to give testimony which might tend to show that he himself had committed a crime" (*Counselman v. Hitchcock*, 142 U. S., 547, 562, 12 Sup. Ct., 195, 35 L. Ed., 1110). And so it was said in *Boyd v. United States* (116 U. S., 616, 6 Sup. Ct., 524, 29 L. Ed., 746), construing the fourth amendment in connection with the fifth that "any compulsory discovery by extorting the party's oath, or compelling the production of his private books and papers, to convict him of crime or to forfeit his property, is contrary to the principles of a free government." Under the fifth amendment, therefore, it would seem that the party invoking its aid by way of claiming exemption, must first be a witness; and under the fourth, the compulsory production of his papers must be for the purpose of convicting him of a crime. Now, a party is not properly a witness, qualified to testify, until he has taken the prescribed oath, and it is only as a witness that he can claim the exemption, so that until he has become a witness the guaranty that the amendment affords him is not being impinged upon, and he is not in a position to assert that

he is being compelled to testify against himself. It was conceded, and so held by the court, in *United States v. Kimball* (C. C. 117 Fed., 156), that:

"It is well settled that a witness can not claim his constitutional privilege until he is sworn. He must take the oath, so that his assertion of privilege shall be made under that sanction."

After citing authorities in support of the principle, the court proceeds as follows:

"If a person can not claim his privilege until he has been sworn, it logically follows that the constitutional provision can not until that time be violated. It can not be violated before it can be invoked for his protection; hence the conclusion is that compulsion, within the meaning of the Constitution, does not arise from mere summoning and swearing the witness."

Such being the law, and the reason of it, a priori, it would not be an infraction of the Constitution to require the party by subpoena *duces tecum*, while not under oath or a qualified witness to bring his papers containing incriminating evidence. Until he is called upon to disclose the incriminating matter involving himself in a transgression of law for which he might be subject to prosecution, he is not in a position to claim the exemption.

Proceeding to the second reason, it was held by Lord Chief Justice Cockburn in *Queen v. Boyes*, 1 B. & S., 311, 321, that:

"To entitle a party called as a witness to the privilege of silence, the court must see from the circumstances of the case and the nature of the evidence which the witness is called to give, that there is reasonable ground to apprehend danger to the witness from his being compelled to answer, although if the fact of the witness being in danger be once made to appear, great latitude should be allowed to him in judging for himself of the effect of any particular question. . . . The object of the law is to afford to a party, called upon to give evidence in a proceeding *inter alios*, protection against being brought by means of his own evidence within the penalties of the law."

I have quoted the above from *Brown v. Walker*, 161 U. S., 591, 599, 600, 16 Sup. Ct., 644, 40 L. ed., 819, without verifying the English case. So it was said in *United States v. McCarthy*, C. C., 18 Fed. 87:

"It is not sufficient to excuse the witness from answering that he may in his own mind think his answer to the question might by possibility lead to some criminal charge against him or tend to convict him of it, if made. The court must be able to perceive that there is reasonable ground to apprehend danger to the witness from his being compelled to answer."

While this case is overruled in the main by *Counselman v. Hitchcock* (supra), yet as to this announcement of the law, it is approved by the case of *Brown v. Walker* (supra) in making the quotation from Lord Chief Justice Cockburn above given.

Now, the answer of Collins goes no further than to declare that these records, books, papers, etc., if produced, will constitute such evidence as would tend to incriminate him; it does not appear how and in what way. The subject-matter of the investigation under way before the grand jury is not given nor is it shown

what relation he sustains thereto, or how, or in what manner the subject-matter of the records will affect him, except by the sheerest conclusion. If the mere assertion of a witness required to bring with him documents under a subpoena, that they contain matter incriminating him, were sufficient to exonerate him from obeying the mandate of the court, it would be useless to attempt to obtain any such documentary evidence in many instances, as a party's interest would overcome his veracity in statement, he not being subject to the penalties of the violation of an oath. The real situation is strongly stated in *Brown v. Walker* (supra). The court says:

"The danger of extending the principle announced in *Counselman v. Hitchcock* is that the privilege may be put forward for a sentimental reason or for a purely fanciful protection of the witness against an imaginary danger, and for the real purpose of securing immunity to some third person who is interested in concealing the facts to which he would testify. Every good citizen is bound to aid in the enforcement of the law and has no right to permit himself, under the pretext of shielding his own good name, to be made the tool of others, who are desirous of seeking shelter behind his privilege."

I am of the opinion that the witness has not excused his refusal to obey the mandate of the subpoena. He will, therefore, be required to produce the papers called for by tomorrow morning at 11 o'clock, under the subpoena, and in default thereof will be committed to the county jail of Multnomah County, Ore., until he shall produce the same.

And it is further ordered that he pay the costs of this proceeding.

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Personal Opinions and Beliefs of Advocates.  
[New York Law Journal.]

The opinion of the Supreme Court of California, in *People, etc., v. Weber*, (June, 1906, 86 Pac., 671), contains the following language:

"In the course of his argument to the jury the attorney-general said: 'We believe, gentlemen, and I say so not without a feeling of pity, not without a feeling of sadness, not without a feeling of pathos, but with a feeling that the evidence in this case as it stands tonight recorded in the notes of this trial points unerringly, points accurately, beyond the possibility of mistake, to this defendant as the murderer of Mary Weber.' Objection was made to this language. It was urged upon the trial court that it was improper for a prosecuting officer to express his belief in the matter of the guilt or innocence of an accused, and that he could with propriety argue only upon the facts in evidence. To this objection the court ruled in the following language: 'The court does not feel it incumbent upon itself to determine the sufficiency of the point as a legal proposition, because the observation of the attorney-general was that he believes that the evidence points to that conclusion. The objection is overruled.' It is, of course, improper for a prosecuting officer to assert his personal belief or personal conviction as to the guilt of an accused, if that belief or conviction is predicated upon anything

other than the evidence in the case. But, upon the other hand, such prosecuting officer has the indisputable right to urge that the evidence convinces his mind of the accused's guilt. Indeed, it would be mere stultification if it were contended that the prosecuting attorney could argue to the jury that the evidence should convince their minds, although it did not convince his. A prosecuting officer, therefore, has the right to state his views, his beliefs, his conviction as to what the evidence establishes (*People v. Romero*, 143 Cal., 460, 77 Pac., 163). Nor can we perceive the slightest impropriety nor just cause of exception in the remarks which the court made in ruling upon this matter."

Undoubtedly it was proper for the appellate court to refuse to reverse the conviction on the ground considered, because, aside from the propriety of the form of the attorney-general's remark, his personal conviction was not emphasized or asseverated and the point was not of substantial weight. We would, however, take exception to the purport and spirit of the language of the Supreme Court of California. As to the duty of excluding personal beliefs or opinions of prosecuting officers founded on matters dehors the evidence, there never could be any dispute. Such statements would be grossly improper and erroneous. We understand that the disapproval in judicial opinions and by text writers of the expression of personal views applies although the same are based on the evidence. Counsel should not be encouraged to indulge in this manner of appeal, and we think the California court was wrong in saying that a prosecuting officer "has the indisputable right to urge that the evidence convinces his mind of the accused's guilt." It does not at all follow that unless the district attorney may state his own convictions he is placed in the position of arguing that the evidence should convince the jury although it does not convince him. A purely impersonal argument as to what the evidence itself proves would not tend to suggest that the speaker actually disbelieves his own contention.

In Judge Sharswood's work on Professional Ethics it is said:

"Indeed, the occasions are very rare in which he (the advocate) ought to throw the weight of his own private opinion into the scales in favor of the suit he has espoused. If that opinion has been formed on the statement of facts not in evidence, it ought not to be heard—it would be illegal and improper in the tribunal to allow any force whatever to it; if on the evidence only, it is enough to show from that the legal and moral grounds on which such opinion rests."

In an article in *Scribner's Magazine* for June, 1901, on Oratory, Hon. George F. Hoar, speaking of advocacy, used the following language: "The question in the American or English court is not whether the accused be guilty. It is whether he be shown to be guilty, by legal proof, of an offense legally set forth. It is the duty of the advocate to perform his office in the mode best calculated to cause all such considerations to make their due impression. It is not his duty or his right to express or convey his individual opinion. On him the responsibility of the decision does not rest. He not only

has no right to accompany the statement of his argument with any assertion as to his individual belief, but I think the most experienced observers will agree that such expressions, if habitual, tend to diminish and not to increase the just influence of the lawyer. There never was a weightier advocate before New England juries than Daniel Webster. Yet it is on record that he always carefully abstained from any positiveness of assertion. He introduced his weightiest arguments with such phrases as 'It will be for the jury to consider;' 'The court will judge;' 'It may, perhaps, be worth thinking of, gentlemen,' or some equivalent phrase by which he kept scrupulously off the ground which belonged to the tribunal he was addressing."

There are many reasons for the exclusion of advocates' personal convictions. Among them are the considerations that the opinion of an eminent and experienced practitioner would be apt to count for more than that of a lawyer of inferior calibre who was opposed to him; that if the custom of expressing individual opinions became established, jurors would always expect them and perhaps attach significance if they were withheld; that on this account, advocates who feared that they might not be able, conscientiously, to say that they believed a defendant innocent would refrain from appearing for him. The true function of an advocate is to make the facts themselves speak, and we deem it unfortunate that the highest court of one of the States should expressly countenance the intrusion of a counsel's personal convictions, although nominally founded on the evidence.

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**Validity and Effect of Conditions Attached to Legacies and Devises Against Contesting Will.**

[B. B. C. in — Law Notes.]

At an early date in England, testators, in order to prevent their heirs or distributees from contesting the validity of their wills, adopted the scheme of giving a legacy or devise to an heir or distributee upon the condition that the particular devise or legacy should be forfeited in case the devisee or legatee contested the will.

Such a condition is classified with the conditions known as conditions in terrorem, and should be strictly construed so as to prevent a forfeiture. In the early cases it was held that where there was probablis causa litigandi, and there was no gift over of the legacy or devise, a legatee or devisee did not by unsuccessfully contesting the validity of the will forfeit the legacy or devise given to him. *Powell v. Morgan* (1688), 2 Vern., 90; *Morris v. Burroughs* (1737), 1 Atk., 399. See, also, *Loyd v. Spillet* (1734), 3 Wms., 344; *Loyd v. Spillet* (1740), 2 Atk., 148. But if there was a gift over of the legacy or devise, the breach of the condition would work a forfeiture. *Cleaver v. Spurling*, 1 Atk., 526, wherein a freeman of London gave by his will thirty-five pounds to his daughter, and provided that if she refused to give a release or put the executors to any trouble, the legacy should go over to her sister's children. The daughter claimed her orphanage part, and did not claim the thirty-five pounds legacy, and this was held to be a forfeiture and to vest the legacy in the legatee over.

In none of these early cases was the validity of the condition, as affected by public policy, considered, but in a later case it was expressly held that such a condition was not invalid as contrary to the policy of the law. *Cooke v. Turner* (1846), 15 M. & W., 727, 14 Sim., 493. In this case Baron Rolfe, in delivering the opinion of the court, said: "The ground on which the argument against the proviso was made to rest was that every heir at law ought to be left at liberty to contest the validity of his ancestor's will, and that any restraint, artificially introduced, might tend to set up the wills of insane persons, and would be, in the language of *Shep. Touchst.*, page 132, against the liberty of law. We can not, however, adopt this reasoning.

Now, if a proviso is valid by way of contract, it must be valid by way of condition also; and it follows, as a corollary from that case, that if A, having succeeded to real property as heir to his father, should devise it partly to a stranger and partly to B, his next brother, subject, as to the gift to B, to a proviso defeating his estate in case he should dispute A's legitimacy, such a proviso would be perfectly good, and yet such a condition, if we were to adopt the defendant's reasoning in this case, would, by the death of A, be void, as infringing the liberty of law. It would prevent, or at least tend to prevent, B from contesting A's legitimacy. And it is surely as much against the policy of the law that an heir should be disinherited by an illegitimate child as by a party claiming under the will of a non compos. And the same principle applies to the case of a proviso restraining a devisee from litigating some doubtful question of law. The result is that in none of these cases is there any policy of law either on the one side or on the other.

"The conditions said to be void as trenching on the liberty of law are those which restrain a party from doing some act which it is supposed the State has or may have an interest to have done. The State, for obvious reasons, has an interest that its subjects should marry, and therefore will not, in general, allow parties by contracts or conditions in a will to make the continuance of an estate depend on the owner not doing that which it either is or may be the interest of the State that he should do. So the State is interested in having its subjects embarked in trade and agriculture; and, therefore, the law will not give effect to a condition defeating an estate in case its owner shall engage in commerce, or sow his arable land, or the like. The principle on which such conditions are void is analogous to that on which conditions defeating an estate, unless the owner commits a crime, are void. In the latter case, the condition has a tendency to induce the violation of a positive duty; in the former, to prevent the performance of what partakes of the character of imperfect obligation. But in the case of a condition such as that before us, the State has no interest whatever apart from the interest of the parties themselves. There is no duty, either perfect or imperfect, on the part of an heir to contest his ancestor's sanity. It matters not to the State whether the land is enjoyed by the heir or by the devisee; and we conceive, therefore, that the law leaves parties to make just what contract and engagements they may think expedi-

ent, as to raising or not raising questions of law or of fact among themselves, the sole result of which is to give the enjoyment of the property to one claimant rather than to another.

"The question whether this proviso is void as being contrary to the policy of the law may be well tested by considering how the case would have stood if, instead of a condition subsequent, it had been made (as in substance it might have been) a condition precedent. Suppose that the testator had said: 'In case my daughter and her husband shall execute all deeds necessary for settling my estate in manner hereinafter mentioned, then I give her, etc.' Surely there could have been no doubt of the validity of that as a condition precedent; and, if so, it must be good as a condition subsequent; for, where the condition is bad on the ground of public policy, it obviously must be bad whether it be precedent or subsequent; for the law will no more allow anything contrary to public policy to be made a means whereby a party shall entitle himself to an estate than it will allow it to be a means whereby he shall be deprived of that of which he is already in possession.

"On these grounds, thinking that there is no question of public policy involved, and considering that the law leaves it to the parties interested in the property, and to them alone, to decide for themselves what questions of law or of fact they shall insist on or abandon, we come to the conclusion that the proviso is good, and we shall certify to the Lord Chancellor accordingly."

And in a later case, on appeal to the privy council from the decision of the Court of Queen's Bench, which reversed the decision of the Superior Court for the province of Quebec, wherein it was held, reversing in banc the decision of Taschereau, J., that such a condition was not invalid under the laws of Quebec, the court referred with approval to the case of *Cooke v. Turner*, supra, and affirmed the decision of the Quebec Superior Court upholding the validity of the condition. *Evanturel v. Evanturel* (1874), L. R., 6, P. O., 1. This case contains a very full and interesting discussion of the French and civil law.

In the United States, while the decisions upon the question of the general validity of such conditions are in accord, they are not in accord upon the question of the effect of a breach of the condition and what constitutes a breach.

In Alabama it has been held that a testator has an undoubted right in disposing of his property to provide that any legatee or devisee who contests his will or seeks to set it aside shall forfeit all interest under it. The will provided that: "It is my will that if any one of my children shall *resist* the probate of my will, or *petition to break or set it aside*, such child or children shall not have any part of my estate whatever, and the portion intended for such child shall be distributed among those of my children mentioned in item No. 8 who *shall not oppose* my will, in the same way that the balance of my estate is therein directed to be distributed; the child or children *opposing my will* being excluded from any participation therein." It was held that a child who, without making himself a party to a contest instituted by another devisee, actively interfered in behalf of the con-

testant, advising and aiding him, was equally within the prohibition, and his interest under the will was forfeited though the contest was abandoned without being brought to trial. *Donegan v. Wade*, 70 Ala., 501.

In New Jersey the validity of such a condition has been upheld, and it has been further held that a breach of the condition would incur the prescribed forfeiture as regards a devise, though there was no gift over of the subject-matter of the devise, and though there was *probabilis causa litigandi*. *Heit v. Hoit*, 42 N. J. Eq., 388.

In Tennessee such a condition has also been held valid, and it has been further held that its breach would work a forfeiture of a legacy as well as a devise, though there was no gift over of the subject-matter of the legacy. *Thompson v. Grant*, 14 Lea (Tenn.), 310.

In Ohio, where such a condition was upheld, it was also further held that in case of a legacy its breach would work a forfeiture though there was no express gift over, and that the subject-matter of the legacy would pass under a general residuary clause. *Bradford v. Bradford*, 19 Ohio St., 546.

In South Carolina, where a testator prior to his death gave to his mistress and his illegitimate children a greater share of his estate than allowed, and provided in his will that any legatee or devisee attacking the gift should forfeit all rights under the will, the condition was held valid. *Briethaupt v. Banskott*, 1 Rich. Eq. (S. Car.), 465.

In Pennsylvania, the court, per Thompson, J., in a case where such a condition was involved, stated that the condition was valid, but that the result of the authorities was to the effect that if there was *probabilis causa litigandi* the breach of the condition would not work a forfeiture, and that in case of a legacy if there was no gift over a breach of the condition would not work a forfeiture. These expressions of opinion, however, were merely obiter dicta, as the decision that there was no forfeiture was based on the ground that the acts of the devisee were not within the prohibition of the condition which the court said should be strictly construed. *Chew's Appeal*, 45 Pa. St., 228. The above case is cited in *Van Dyke's Appeal*, 60 Pa. St., 491, to the effect that in case of a legacy if there was no gift over the breach of the condition would not work a forfeiture. See, also, *Cochran v. Cochran*, 127 Pa. St., 486.

In *Friend's Estate* (1904), 209 Pa., 442, the court again stated that such a condition was valid, but held that where there was *probabilis causa litigandi* the breach of the condition would not work a forfeiture of a legacy, and with regard to the question whether there was *probabilis causa litigandi*, said: "Whether there was *probabilis causa litigandi* must, in every case, be for the court distributing the estate of the testator, and when it is clear that there was such cause the same decree ought to be made that was made here. If it is not clear, or if it be doubtful whether there was probable cause, the will of the testator should be regarded as supreme, and his direction to forfeit carried out. A disappointed beneficiary under a will is not to be encouraged to make a contest to set it aside, and when he does so, in the face of notice from the testator

that he shall have nothing if he attempts to strike down his provisions, he must understand the imminent risk he runs. The Orphans' Court is a court of equity, and its judges, when passing upon the question of forfeiture under such testamentary clause, sit as chancellors. To their consciences are committed, in the first instance, subject always to review by the proper appellate court, the imperiled interests of legatees or devisees who contest wills making them conditional beneficiaries, as Mrs. Friend made her children and grandchildren." And after a review of the evidence the finding of the lower court that there was *probabilis causa litigandi* was upheld. In this case the court cited with approval the New York case of *Jackson v. Westerfield*, *infra*.

In New York, in the special term of the Supreme Court, the validity of such a condition was recognized, but it was held that if there was *probabilis causa litigandi* opposition to the probate of the will would not work a forfeiture of a legacy. *Jackson v. Westerfield*, 61 How. Pr. (N. Y.) 399. And in a later case in the general term of the Supreme Court the general validity of such a condition was again recognized, but it was held that as prohibiting a contest instituted by the guardian of an infant legatee appointed by the Probate Court the condition was invalid as against public policy. *Bryant v. Thompson*, 59 Hun (N. Y.), 545. In this case the court said: "I see no way, except as hereinafter stated, of relieving the infant from the palpable fact that there was a very serious contest made over her father's will by another in her behalf. The action taken in such contest bound, so far as any decree of the surrogate could bind parties upon the question of the testamentary capacity of the testator, as completely as though she had been of full age and had the selection of the counsel who should conduct her defense to the probate of the will. Was it the intention of the testator to cover only the case where there was a personal and responsible act taken by one of the legatees against the will? I think not. He intended to embrace all cases where a contest should be made to the probate of the will where, by the judgment rendered upon such contest, the provisions of the will might be defeated. In such a case it was his obvious purpose to deprive the party of any benefits under the provisions in the will.

"It follows, therefore, as it seems to me, that the respondent failed to observe the condition upon which the bequest was made to her, and, consequently, that she can not now, having been defeated in the probate, receive anything from the estate, unless the provision in question, when aimed at an infant, is to be deemed void as being against public policy. It may well be said that the public has no concern with the question whether the will of a certain person shall be denied probate upon the ground of want of testamentary capacity, and that, consequently, a bequest conditioned upon a party of full age not raising such a question may be deemed valid and may be defeated by the subsequent act of the party in violation of the condition upon which the bequest was made. Any reasonable condition may be contained in a will, but where the condition is such as to subvert the course of judicial proceedings and to de-

prive the court of the right and duty imposed upon it by law to institute, of its own motion, proper proceedings for the protection of the infant's right, the question immediately becomes one of public policy and brings into the discussion entirely new considerations. . . . Any provision in a will which in its application comes in conflict with the organic or statutory law of the State, by which it is made the duty of the court to look after the rights of infants, irrespective of the fact whether they are of tender years or not, must be deemed to be illegal and void as being against public policy. A testator can not be permitted thus to obstruct, by any clause in his will, the necessary steps prescribed by law for the conduct of judicial proceedings in the case of infants, where the paramount duty of the court is to act in behalf of its wards and for their best interests. No penalty or forfeiture can be worked against such a party who has done nothing more than to submit his rights to the adjudication of the courts. Any other rule as applicable to infants would work serious mischief. On the one hand, the court would be required, through its officers, to examine into and ascertain the rights of the infants and determine whether a contest by the ward should be made, and then, after so deciding, if the contest was had and proved unsuccessful, by the judgment of the same or another court, the provisions of the will for the infant would become inoperative, though every step in the contest was taken intelligently and in good faith and without the consent of the infant. No such restraint upon the independence of officers charged with a duty to their wards can safely be tolerated in last wills. With adults the case is different. They may give away their rights; they may waive the provisions made for them; they are at liberty to enter upon a contest of a will or not, at their pleasure; but with infants the case is otherwise. They have no voice in the matter. The court acts for them, and it would be against the policy of the State to permit its action to be stayed or trammelled by a testamentary paper imposing a forfeiture upon its ward in case it should exercise its judicial functions in that particular instance." An appeal in this case was dismissed (128 N. Y., 426) on the ground of want of interest in the appellants. See, also, *Woodward v. James*, 44 Hun (N. Y.), 95. In *Matter of Barandon*, 41 Misc. (N. Y.), 380, the validity of a condition for a forfeiture of a legacy or devise in case the will is contested, was again upheld. See, also, *In re Grote's Estate*, 2 How. Pr. (N. Y.) N. S., 140; *In re Stewart's Will*, 5 N. Y. Supp., 32.

In the United States Supreme Court it is stated *obiter*, as the conclusion warranted by authorities, that where legacies are given to persons upon condition not to dispute the validity of the will, the condition is not in general obligatory, but only in *terrorem*, and if there exists *probabilis causa litigandi*, the nonobservance of the condition will not work a forfeiture, but if there is a gift over of the legacy in case of a breach of the condition, it remains no longer a condition in *terrorem*, but assumes the character of a conditional limitation and breach of the condition will work a forfeiture of the legacy. *Smithsonian Inst. v. Meech*, 169 U. S., 398.

In Virginia it has been held that a condition annexed to a legacy declaring the legacy forfeited if any attempt is made to contest the will did not work a forfeiture if there was no gift over of the legacy, and that a provision that the legacy should revert to the estate was not a sufficient gift over even in connection with a general residuary clause. *Fifield v. Van Wyck*, 94 Va., 557.

According to the weight of the foregoing authorities the following principles, whether based on proper grounds or not, seem to be established: (1) Conditions annexed to legacies and devises providing for a forfeiture in case the will is contested are valid. (2) In case of a legacy, a breach of the condition will not work a forfeiture unless there is a gift over of the subject-matter of the legacy. (3) If there is no gift over and there was *probabilis causa litigandi*, a breach of the condition will not work a forfeiture either as regards a legacy or devise. (4) Where the will is contested on behalf of an infant legatee or devisee, the forfeiture will not be decreed irrespective of whether there was a gift over or not.

Sale of Good Will.  
[London Law Journal.]

The question whether a person who sells the good will of his business can be prevented from carrying on a similar business in his own name is one on which the authorities are not conclusive. Undoubtedly the sale does not, in the absence of some express stipulation, preclude the seller from setting up the same kind of business in the same neighborhood, though he must not describe himself as carrying on the identical business which he has sold. In *Ohurton v. Douglas*, 28 Law, J. Rep. Chanc., 841, it was held that this principle applied even when the seller's own name was the only one which appeared in the firm (which in that case traded as *John Douglas & Co.*). Later, in *Levy v. Walker*, 48 Law J. Rep. Chanc., 279; L. R. 10 Chanc. Div., 448, Lord Justice James laid down the broad rule, thought it was not necessary for his decision, that the assignment of a business and good will conveys the exclusive right as between the parties to use the trade name under which the business was carried on; but afterwards, in *re David and Matthews*, 68 Law, J. Rep. Chanc., 185; L. R. (1899), 1 Chanc., 373, Mr. Justice Romer, while applying this rule, made a cautious reservation of special cases of difficulty which might arise on the sale of a partnership business, when the name of a partner was exactly the same as the trade name. *Mrs. Pomeroy (Lim.) v. Scall*, decided by Mr. Justice Buckley at the end of the last sittings, again raised the question whether the vendor of a business can trade in his own name, when it is the only name which appears in the style of the old firm. *Mrs. Pomeroy* had sold her business to a company called *Mrs. Pomeroy (Lim.)*, whose business was subsequently transferred to the plaintiff company. Afterwards she resumed business on her own account, and issued an advertisement stating that she was no longer connected with *Mrs. Pomeroy (Lim.)*; and the learned judge held that she was entitled to trade in her own name

as long as she took care to distinguish her business from that which she had sold. With the possible exception of Lord Justice James' dictum, none of the authorities conflicts with this decision.

Recent Important Bankruptcy Decisions—Reported  
in the October Number, 1906, American Bank-  
ruptcy Reports, Vol. 16.

**Act of Bankruptcy—Test of Insolvency.**—It has been held in *In re Hines*, 16 Am. B. R., 295, that the test of a "fair valuation" of an alleged bankrupt's property under section 1 (15) of the Bankruptcy Act, is its market value at the time involuntary proceedings in bankruptcy are commenced against him, unaffected by a depreciation consequent upon the recovery of a judgment against him and a levy thereunder, no deduction should be made for property exempt from execution, but under the terms of the section, property that he may have conveyed, transferred, concealed, etc., with intent to defraud, hinder, or delay creditors, should not be included in determining whether he is insolvent within the meaning of the act.

**Order to Pay Over Assets of Bankruptcy Estate—Proceeds of Wife's Real Estate in Possession of Husband.**—Where, under the State law, the proceeds of a sale of a married woman's real estate is absolutely subject to her control, the case of *In re Cole*, 16 Am. B. R., 302, holds that the fact that the money was paid to her husband is no excuse for her disobedience of an order to turn over the money to her trustee in bankruptcy, unless she shows as a fact her inability to obtain its actual possession.

**Discharge in Bankruptcy—Effect of Refusal in Prior Proceedings.**—Where a bankrupt has been denied a discharge, it has been held in *re Kuffler*, 16 Am. B. R., 305, that he can not, in a second bankruptcy proceeding, be discharged from debts that were provable in former proceedings.

**Bankrupt—Delivery of Books of Account to Receiver—Incriminating evidence.**—Where it appears that the books of account of an alleged bankrupt are necessary to the proper performance of the duties of a receiver appointed to continue the business, it is held in *Matter of Rosenblatt*, 16 Am. B. R., 306, that he is entitled to an order for their delivery to him, unless the court is satisfied that the bankrupt's claim that the books contain incriminating evidence has some foundation in fact, the question as to whether his plea of constitutional privilege is well founded, being determined by the court and not by the bankrupt, regardless of the facts.

**State Insolvency Law—Pennsylvania Act 1870 (P. L., 58).**—The District Court, Eastern District of Pennsylvania, has held, in *Matter of International Coal Mining Co.*, 16 Am. B. R., 309, that the Pennsylvania Act of April 7, 1870, under which the property of an insolvent corporation may be sold for distribution of the proceeds among its creditors, is in effect an insolvency law, and the operation of the Bankruptcy Act, 1898, can not be defeated by proceedings taken under the State law.



**Claims in Bankruptcy—Partner Borrowed Money on Partnership Note—Not Provable Against Firm.**—Where a bank becomes the purchaser for value before maturity of a note which shows upon its face that it was not made in usual and ordinary course of business of borrowing money for partnership purposes, and the proof is clear that the money was not borrowed for the benefit of the firm, that one of its active members who furnished a large part of its capital never knew of the execution of the note until the failure of the firm, and neither expressly or impliedly ratified the execution thereof, in *Am. B. R.*, 318, that it is not binding upon the firm, and a claim thereon allowed against its estate in bankruptcy is properly expunged.

**Chattel Mortgage—Mortgagor Selling for Own Benefit.**—The U. S. Circuit Court of Appeals, Second Circuit, has held, in *In re Marine Construction and Dry Dock Co.*, 16 *Am. B. R.*, 325, that in New York, a chattel mortgage, given by a corporation engaged in shipbuilding, upon its stock of material, which it is empowered to sell and replace for the purposes of its business, provided always that the security of the bonds for the payment of which it was executed should not be in any wise reduced or impaired, is void as against the trustee of the bankrupt mortgagor.

**Contempt—Disobedience of Order to Turn Over Assets—Ability to Comply.**—It has been held, in *In re Davison*, 16 *Am. B. R.*, 337, that a bankrupt should not be adjudged in contempt for disobedience of an order to turn over assets to her trustee unless the court is satisfied of her present ability to comply with the order.

In *Davison* case, 16 *Am. B. R.*, 337, it was further held that the court, not being satisfied of the present ability of the bankrupt to comply with an order to turn over assets alleged to have been concealed by him from the trustee, the granting of an order adjudging her in contempt and committing her to jail, upon a conjecture that her husband or other person, actual principals in the fraudulent appropriation of the property sought to be reached, may come to her relief, would be an abuse of the power to punish for contempt.

**Bankruptcy Act—Section 4b as Amended—"Mining" Includes Quarrying.**—Under section 4b of the Bankruptcy Act, as amended, the U. S. Circuit Court of Appeals, First Circuit, has held in the same case of *Matter of Matthews Consolidated Slate Co.*, 16 *Am. B. R.*, 407, that the word "mining" in a broad sense must be construed to include the quarrying of slate from natural beds, whether open or under ground.

**Injunction—Contempt Proceedings in State Court.**—Where judgment has been recovered against a bankrupt upon a dischargeable claim, held, by the U. S. Circuit Court of Appeals, Second Circuit, in the case of *Matter of Adler*, 16 *Am. B. R.*, 414, that the Bankruptcy Court may, in its discretion, restrain the judgment creditor from attempting to enforce its judgment, until twelve months after the date of the adjudication in bankruptcy, or until the question of the bankrupt's discharge is determined.

**Adjudication in Bankruptcy—No Assets—One Debt.**—The case of *In re Schwaninger*, 16 *Am. B. R.*, 427, holds that a debtor having but one provable debt and no assets to which the trustee can take title under the Bankrupt Act of 1898, may be adjudged a voluntary bankrupt.

**Fraudulent Transfers—Sale of Entire Stock of Goods—Burden of Proof.**—It has been held, in *re Knopf*, 16 *Am. B. R.*, 432, that the sale of the entire stock of a retail merchant within four months of his adjudication as a bankrupt made without an inventory having been taken is null and void under section 67e of the Bankruptcy Act as a sale made with intent to hinder, delay, and defraud creditors, and the title to the goods vests in the bankrupt's trustee, unless the purchaser shows not only that he acted in good faith and paid a present fair consideration, but that he exercised ordinary prudence and diligence to ascertain whether the seller who at the time of the sale was insolvent could make a transfer of his property violative of the Bankrupt Act.

**Reorganization of Street Railway Companies—Specific Performance.**—In *Cells v. Brown*, decided by the United States Circuit Court of Appeals, Eighth Circuit, in March, 1906 (144 *Fed.*, 742), the following is from the syllabus by the court:

"Where two street railway companies to prevent financial disaster, enter into a tripartite agreement with designated syndicated managers for a plan of reorganization, whereby such managers were to control, for a given period, and sell participating interests in certain bonds and securities hypothecated as collaterals to secure a contract between the two street railway companies, to raise the necessary funds to meet pressing, maturing obligations of the pledgor company, providing for a specific time of control by and compensation to such syndicate managers, who, in order to raise an immediate fund of \$7,000,000, submitted to the complainants, as shareholders in the pledgor company, a proposition to allot to them an aliquot portion of such bonds and securities on the payment to a designated agent of the syndicate managers of the purchase price, such interest in the purchaser to be evidenced by a participating receipt to be delivered to him by such agent, which proposition the complainants accepted, and, when they made tender of the designated purchase price, refused to execute the agreement, evidencing the right of the syndicate managers to hold and manage the securities for the designated period and compensation for their services, which was left by the syndicate managers with such agent to be signed by the purchasers before delivering to them the participating receipt evidencing such allotment. Held that, it appearing, from the evidence that the complainants had participated in the meeting of the stockholders of said railroads providing for such reorganization, and that they had notice, before the submission of said proposition to them of the terms of said agreement submitted for their signature, their refusal to so execute the same was a departure from the syndicate proposal of sale and disentitled the complainants to a specific performance."

The legal obligation of a father to support his minor children is held, in *Spencer v. Spencer* (Minn.), 2 L. R. A. (N. S.), 851, not to be impaired by a decree of divorce giving the custody of the children to the mother.

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## RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

## Legal Notices.

### FIRST INSERTION.

**Dani. W. O'Donoghue, Attorney**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Lawrence O'Neill**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 9th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of October, 1906. **MARY O'NEIL**, 721 22d st. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,952. Administration. [Seal.] 41-3t

**Nelson Wilson, Attorney**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Blanche E. Walker**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of October, 1906. **GEORGE E. WALKER**, 1929 Calvert st. N.W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,957. Administration. [Seal.] 41-3t

## Legal Notices.

**Henry E. Davis, Attorney**

In the Supreme Court of the District of Columbia,  
Holding a Probate Court.  
In the Matter of the Estate of **James K. Murphy**,  
Deceased.

Admn. No. 13,809.

Application having been made herein for the probate of the last will and testament of **James K. Murphy**, deceased, and for letters testamentary on said estate, by **Sarah K. Foss**, it is, this 10th day of October, A. D. 1906, ordered, that **John M. Murphy** and **Francis P. Murphy**, and all others concerned, appear in said court on the 15th day of November, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] **ASHLEY M. GOULD**, Associate Justice. A true copy. Attest: **James Tanner**, Register of Wills. 41-3t

**Eugene A. Jones, G. C. Shinn, Attorneys**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Jessie Bingham Frazier**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of October, 1906. **EUGENE A. JONES**, Commercial Bank Building. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,892. Administration. [Seal] 41-3t

**Wilton J. Lambert, Attorney**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Leander Van Riwick**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 9th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 9th day of October, 1906. **MARY VAN RIEWICK**, 105 2d st. N. W.; **WILTON J. LAMBERT**, 410 5th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,874. Administration. [Seal.] 41-3t

**Merillat & Richardson, Solicitors**

In the Supreme Court of the District of Columbia.  
**Charles H. Merillat et al. v. Lyman D. Landon et al.**  
Equity, No. 28,398.

The object of this suit is to subject the pretended interest of **Lyman D. Landon** and **Susie V. Kimberly** in a certain tract of land known as Dry Meadows, in the District of Columbia, to the lien of a decree or judgment against **Thomas G. Hensley** and **Melville D. Hensley**. On motion of the complainant, it is, this 11th day of October, A. D. 1906, ordered that the defendant, **Leonard H. Dyer**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and the Evening Star before said day. **HARRY M. CLAIBURN**, Chief Justice. A true copy. Test: **J. R. Young** Clerk, by **Wm. F. Lemon**, Asst. Clerk. 41-3t

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**Legal Notices.**

**John L. Johnson, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Eveline Hawkins**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 9th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of October, 1906. **JOHN LEWIS JOHNSON**, 500 5th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,953. Administration. [Seal.] 41-3t

**Newton & Gillett, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Archib. Upperman**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of October, 1906. **ALEX. ANDER KENT**, 28 T st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,923. Administration. [Seal.] 41-3t

**Richard P. Evans, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Pinkney W. Smith**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of October, 1906. **ROBERT L. EWING**, 106 5th st. N.E. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,369. Administration. [Seal.] 41-3t

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Delos Lloyd**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of October, 1906. **SARAH A. LLOYD**, Executrix. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,900. Admn. [Seal.] 41-3t

**SECOND INSERTION.**

**F. G. Coldren, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Michael O'Hearn**, sometimes known as **William Walsh**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of September, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of September, 1906. **FREDERICK A. FENNING**, Century Building. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,605. Administration. [Seal.] 40-3t

**Legal Notices.**

**Wm. A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Halbert E. Paine**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Friday, the 26th day of October, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 8d day of October, 1906. **AMERICAN SECURITY AND TRUST COMPANY**, James F. Hood, Secretary, by **Wm. A. McKenney, Attorney**. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,118. Administration. [Seal.] 40-3t

[Filed October 4, 1906. J. R. Young, Clerk.]  
**Gittings & Chamberlain, Solicitors**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**Sarah R. Thorn, Complainant, v. Joseph A. Thorn,**  
**Charles E. Thorn et al., Defendants.**  
 Equity No. 26,078.

The object of this suit is to obtain a construction of the will of the late Columbus W. Thorn, deceased. On motion of the complainant, it is, this 4th day of October, A. D. 1906, ordered that the defendants, **Joseph A. Thorn** and **Charles E. Thorn**, cause their appearances to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in the case of default. Provided a copy of this order be published at least once a [Seal] week for three successive weeks in The Washington Law Reporter and The Washington Post. **HARRY M. CLABAUGH**, Chief Justice. A true copy. Test: **J. R. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. 40-3t

**Blair & Thom, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**In the Matter of the Estate of Sarah E. Ferguson, Deceased.** Probate No. 9450.

Application having been made herein for the probate of the last will and testament of **Sarah E. Ferguson**, deceased, as a will of real estate, by **Lillian C. Whitely**, it is ordered, this 4th day of October, 1906, that **Sanford H. Waugh**, **George H. Waugh**, **Ellis E. Taylor**, **Julia E. Race**, **Ralph Seabury Waugh**, **Florance Waugh**, **Mary A. Shaw**, and all others concerned, appear in said court on the 12th day of November, A. D. 1906, at 10 o'clock A. M., and show cause why such application should not be granted. Provided notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be [Seal] not less than thirty days before said return day. **ASHLEY M. GOULD**, Justice. A true copy. Attest: **James Tanner**, Register of Wills. 40-3t

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Gustavo L. Rozer, Jr.**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 22d day of October, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 3d day of October, 1906. **F. WALTER BRANDENBURG**. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,133. Administration. [Seal.] 40-3t

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W.

**Legal Notices.**

**Wm. A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Eliza L. B. Paine, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Friday, the 26th day of October, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 8d day of October, 1906. AMERICAN SECURITY AND TRUST COMPANY, James F. Hood, Secretary, by Wm. A. McKenney, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,114. Administration. [Seal.] 40-3t

**T. Percy Myers, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**William W. Miller, Complainant, v. The Unknown Heirs, Alienees, and Devisees of Charles Carter, Defendants.** In Equity, No. 26,521.

The object of this suit is to quiet title by adverse possession in the complainant to the following described property, situate in the District of Columbia, to wit: Part of original lot 1 in square 253, contained within the following metes and bounds, viz: Beginning at the southeast corner of said lot and square and running thence west on G street 59.98 feet; thence north 88.48 feet to the center line of a wall; thence easterly along said center line of wall 29.94 feet; thence southerly 0.72 of a foot, to the center line of another wall; thence easterly along said center line of said last-mentioned wall 30 feet to Thirteenth street, and thence south 37.73 feet to the place of beginning. On motion of the complainant, it is, this 8d day of October, A. D. 1906, upon good cause shown, ordered that the defendants, the unknown heirs, alienees, and devisees of Charles Carter, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of one month from this date; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star [Seal] before said day. ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by R. P. Belew, Asst. Clerk. 40-3t

**P. H. Marshall, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Ellen M. Ware, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 1st day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hands this 1st day of October, 1906. RICHARD WARE, 604 14th st. N. W.; ALBION K. PARRIS, 604 14th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,839. Administration. [Seal.] 40-3t

[Filed September 28, 1906. J. R. Young, Clerk.]

**Carlisle & Johnson, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Ida V. Garrity et al. v. Lewis A. Means, Trustee, et al.** Equity No. 21,864. Doc. 49.

Hugh T. Taggart, Oscar Luckett, and William M. Offey, trustees herein, having reported the sale of part of lot No. 197 in square 1291 (formerly square 121 of Threlkeld's addition to Georgetown), in the District of Columbia, and being the north 23.75 feet front by the full depth of said lot, to George W. Ray, for the sum of \$2,420 cash, it is, by the court, this 28th day of September, 1906, ordered that the said sale be finally ratified and confirmed unless cause to the contrary be shown on or before the 30th day of October, 1906. Provided that a copy of this order be published in The Washington Times and The Washington Law Reporter once a week for three successive weeks before said [Seal] last named day. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 40-3t

**Legal Notices.**

[Filed October 1, 1906. J. R. Young, Clerk.]

**S. T. Thomas, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Mary E. Bacon et al. v. Annie M. Hunt et al.** In Equity, No. 23,870.

The trustees herein having reported that they have received a private written offer of \$1,100 cash for the purchase of the property mentioned in these proceedings, viz: Sublots lettered D & F in square 701, it is ordered this 1st day of October, A. D. 1906 that said trustees be and they are hereby authorized to accept said offer, and upon compliance with the terms of sale, the said sale shall stand confirmed, unless cause to the contrary be shown on or before the 31st day of October, 1906. Provided a copy of this order be published in The Washington Law Reporter once in each of three successive weeks before the last mentioned date. By the [Seal] Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 40-3t

**THIRD INSERTION.**

**Wm. H. Harvey, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Sarah Parker Gilbert, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of September, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of September, 1906. EDITH E. KING, 178 S. st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,853. Administration. [Seal.] 39-3t

**Jesse H. Wilson and Jesse H. Wilson, Jr., Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Hiram R. Smith, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of September, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of September, 1906. B. T. JANNEY, 1671 31st st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,821. Administration. [Seal.] 39-3t

**E. S. Mussey, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the State of California, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Jane M. Seavey, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of September, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of September, 1906. CORDELIA S. STERLING, care of Mrs. E. S. Mussey, Columbian Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,831. Administration. [Seal.] 39-3t

**Alex. H. Bell, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of James R. Bryan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of September, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of September, 1906. WILLIAM J. YASTE, 102 First st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,929. Administration. [Seal.] 39-3t

**Legal Notices.****A. H. Bell and Bates Warren, Solicitors**

In the Supreme Court of the District of Columbia.  
Richard E. Cozzens et al. v. John F. McCormick et al.  
No. 26,435. Equity Doc. —.

The object of this suit is to enforce mechanics' liens against lots 601 to 611, both inclusive, in Jameson's subdivision of lots 1 and 2 in S. P. Brown's subdivision of Mount Pleasant as said first-named subdivision is recorded in the office of the surveyor of said District in County Book No. 20, page 24. On motion of the complainants it is, this 26th day of September, 1906, ordered that the defendant, John F. McCormick, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The

[Seal] Washington Law Reporter and The Washington Times before said day. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by S. McC. Hawken, Asst. Clerk. 39-31

**George C. Gertman, Attorney**

In the Supreme Court of the District of Columbia,  
Holding Equity Court.

William W. Godding, Trustee, Complainant, v. Hatterley W. Talbott et al. Defendants.  
Equity, No. 12,117.

Upon consideration of the report of Herman E. Gasch, trustee, filed herein, stating that he has sold, at public auction, sublot 18 in square 782, being premises 311 Massachusetts avenue, northeast, to Mary E. Stewart, for thirty-one hundred and seventy-five dollars (\$3,175.00), and has likewise sold the west 7.50 feet front, by depth of 100 feet, of lot 8, and east 12.50 feet front, by full depth thereof, of lot 4 in square 818, being premises 404 B street, southeast, to Elisha P. Taylor, Jr., for twenty-two hundred and twenty-five dollars (\$2,225.00), it is, by the court, this 24th day of September, A. D. 1906, ordered that said sales be ratified and confirmed unless cause to the contrary be shown on or before the 25th day of October, A. D. 1906. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said last-named date.

[Seal] HARRY M. CLABAUGH, Chief Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 39-31

**L. Cabell Williamson, Attorney**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of James F. Brown, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers therefor legally authenticated, to the subscriber, on or before the 25th day of September, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of September, 1906. GEO. W. STUART, 11th st. Wharf, S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,908. Administration. [Seal.] 39-31

**Sheehy & Sheehy, Attorneys**

In the Supreme Court of the District of Columbia,  
Holding a Special Term as a Probate Court.  
In re Estate of Nora Flannery, Deceased.  
Adm. No. 12,559.

Michael A. Lynch, executor of the last will and testament of Nora Flannery, deceased, having reported that he has sold at private sale to Alexander Sewall for the sum of \$2,231 net, and all cash, lot numbered fifty-nine (59) in the subdivision made by John B. Turton, trustee, of square numbered one hundred and eighty (180), according to the plat of said subdivision as the same appears of record in the office of the Surveyor of the District of Columbia, in Book R. W., at page 3, together with the improvements, being premises known as No. 1612 Church street northwest. It is now, this 27th day of September, A. D. 1906, upon consideration of said report, by the court ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 29th day of October, A. D. 1906. Provided a copy of this order be published in The Washington Law Reporter once a week for three

[Seal] successive weeks before said last named date. HARRY M. CLABAUGH, Chief Justice. A true copy. Attest: James Tanner, Register of Wills. 39-31

**Legal Notices.****Baker, Sheehy & Hogan, Solicitors**

In the Supreme Court of the District of Columbia.

Sarah A. Gray Cochran et al., Complainants, v. Unknown Heirs, Alienees, or devisees of Eliza Hamilton et al., Defendants. No. 26,210. Equity Doc. 58.

The object of this suit is to quiet title by adverse possession in the complainants to the following described property, situate in the District of Columbia, to wit: lot numbered thirty-three (33), in square numbered seven hundred and thirty-two (732), and for sale of said lot and partition of proceeds among complainants. On motion of the complainants, it is, this 26th day of September, 1906, ordered that the defendants, the unknown heirs, alienees, or devisees of Eliza Hamilton, unknown heirs, alienees, or devisees of Samuel Gant, unknown heirs, alienees, or devisees of Mariha Sewell, unknown heirs, alienees, or devisees of Josephine Robertson; Maria W. Waterston, M. K. Waterston, Roderick A. Waterston, Charles Waterston, Rebecca Machoner, and Sarah M. Holcomb, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and the Washington Post, being newspapers published in the city of Washington, District of Columbia. By the Court:

[Seal] HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk. 39-31

**Philip Walker, Attorney**

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Adelaide M. Shedd, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 15th day of October, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 26th day of September, 1906. FREDERICK G. STUTZ, by Philip Walker, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,151. Adm. [Seal.] 39-31

**E. A. Newman, Solicitor**

In the Supreme Court of the District of Columbia.

Claudia M. Moran and Another v. The Unknown Heirs or Devisees of John B. Bernabien, Deceased.  
No. 26,501. Equity Doc. 59.

The object of this suit is to obtain a decree of the court vesting title by adverse possession in the complainants according to their respective rights in and to all that certain piece or parcel of ground and premises situate in the city of Washington and District of Columbia, and known and distinguished as and being part of original lot 6 in square 426. Beginning for said part at the northwest corner of said lot and running thence east 78.67 feet to the line of the property conveyed to Young by deed recorded in Liber No. 1721, folio 439, one of the land records of the District of Columbia; thence south with the west line of said property 23.58 feet; thence west 22.47 feet to the line of the property conveyed to the heirs of Martha J. Greer by deed recorded in Liber No. 1751, folio 194, of the said land records; thence north 0.95 of a foot, and thence southwesterly 56.20 feet, more or less, to the line of 8th street west, and thence north along the line of said 8th street 24.58 feet to the said place of beginning. On motion of the complainants, it is, this 7th day of September, 1906, ordered that the defendants, the unknown heirs or devisees of John B. Bernabien, deceased, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three months in The Washington Law Reporter and The Washington Post and The Evening Star before said day. ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer Asst. Clerk. sept. 14, 21; oct. 12, 19; nov. 9, 16

# The Washington Law Reporter

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WASHINGTON, D. C. . . . . OCTOBER 19, 1906

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## Libel by Unauthorized Publication.

A very remarkable determination as to what constitutes a libelous publication is contained in the case of *Martin v. Picayune*, decided by the Supreme Court of Louisiana (40 So. Rep., 376). The plaintiff was a physician of high standing in his profession and a member of a medical society, the members of which were opposed to advertising by physicians and had adopted resolutions condemning the practice. The defendant newspaper, obtaining information that a remarkable cure had been effected by the professional skill of the plaintiff, published a rather glowing account of the case, stating that other physicians had treated the patient without effect, and containing various other laudatory remarks. It was alleged by the plaintiff that this publication, which, although true and obtained from the father of the patient, had not been authorized by the plaintiff, had a tendency to lead the public and his brother practitioners to believe that he was advertising, and thereby caused them to class him in the category of quacks, who alone, it was alleged, resorted to advertising. The trial court held that the complaint stated no cause of action; but this ruling is reversed by the Supreme Court, which declares that the complaint charged is an actionable libel. Under such circumstances, the truth of the matter published is not a defense.

## Chief Justice Richard H. Alvey.

In an address before the Maryland State Bar Association on "The Former Chief Judges of the Court of Appeals of Maryland," the then Chief Judge James McSherry paid this high tribute to the late Chief Justice Richard H. Alvey, his friend and former colleague:

On the 13th of November, 1883, after the resignation of Chief Judge Bartol, Judge Richard H. Alvey, who had been elected Chief Judge of the Fourth Judicial Circuit in 1867 and had been re-elected in 1882, and who therefore from the first mentioned date had been an Associate Judge of the Court of Appeals, was designated by Governor Hamilton to be Chief Judge of the last named court. The opinions of Judge Alvey as Associate Judge are reported in volumes 28 to and including 60 Md. Reports; and as Chief Judge from 69 Md. to and including 77 Md. His opinions are strong, vigorous and broad. He never failed to grasp the underlying principle of a case, and he never erred in its application. His work speaks for itself. His knowledge of the law was profound and his capacity for applying it remarkable. His industry was marvelous. In a word, his opinions as reported are not excelled in the judicial annals of the State or by the judgments of any other judge where the English tongue is spoken. In April, 1893, President Cleveland appointed Judge Alvey to be Chief Justice of the Court of Appeals of the District of Columbia, a tribunal which had just then recently been created by act of Congress. On the 20th of April an unusual audience, consisting largely of members of the bar, was present in the Court of Appeals room and took part in proceedings of remarkable interest and such as had never before occurred in the judicial history of the State. It had been announced that the Attorney-General and others would attend to give formal expression of their feelings of sincere and deep regret at the contemplated retirement of Chief Judge Alvey from the Bench of the Court of Appeals and to tender him an affectionate farewell. Attorney-General Poe, in the course of his admirable remarks, said "the public announcement that today, for the last time, we shall have the privilege of seeing our honored Chief Justice in his accustomed place in this court very easily accounts for this unusual gathering of representative members of our bar. . . . We are here to thank him for the serene patience with which he always listened, the laborious thoroughness with which he always investigated, the calm analytical thoughtfulness with which he pondered, and the commanding power with which he embodied the well-considered results of his deep study and reflection in the luminous judgments which, enriching 49 volumes of our reports, will connect his name forever with the proudest history of this tribunal. We are here to tell him before he steps down from the high place which he has so long been a strength and a consolation for us to know that he filled, how we admired and gloried in his enthusiastic devotion to his work; the absolute surrender of his time and talents to the absorbing demands of his judicial functions and the inestimable benefits

to the jurisprudence of our State, of his ample and legal learning and acquirements." And upon the same occasion Mr. Bernard Carter, the magnificent type of a Maryland lawyer and a polished gentleman, said: "I am very sure, Mr. Chief Justice, that we all realize, coming here as we do today, spontaneously from all parts of the State that our words are not needed to convince the people of Maryland of your eminent judicial ability, your rich judicial acquirements, and your worth in every way as a man; these things are known of all men in this, your native State. . . . We have assembled only that we may have the pleasure of testifying to you our appreciation of you as a judge, our warm affection for you as a man and to bid you an affectionate farewell; and it is in every way meet that we should do this, when for the second time in the history of our country Maryland is about to furnish to a court which sits in the District of Columbia a great Chief Justice."

#### The Decadence of a Law Book.

(London Law Journal.)

In looking over the shelves of a law library we are often struck with text-books and treatises now obsolete, but which once were flourishing standard works and in daily professional use. How is it, we wonder, that they have come to this—to cumber the shelves? There is something, no doubt, in the reason which Lord Bowen gave for not writing a law book, "You write a history of law or a treatise about it, and then a puff of reform comes and alters it all, and makes your history or treatise useless." We have frequently had such a "puff of reform" in recent days, and it has wrecked, for the time being, many a legal craft; but anon the book refits, trims its sails, and is off again gaily in a new edition. Then why, it may be said, with this power of rehabilitation, should a good law book ever die; and yet we know they do, even the best. Where, for instance, is "Sugden on Vendors and Purchasers," or "Sugden on Powers?" Where is "Wordsworth on Companies," and "Rose on Bankruptcy," and "Selwyn's Nisi Prius?" Where is "Tidd's Practice," and "Lush's Practice," and "Jervis's?" Where is "Williams," "Saunders," and "Burns' Justice of the Peace?" Has the high reputation of any of them saved them from oblivion? It seems as though every law book had its life, which, like the natural life of man, may not be prolonged beyond a certain term; indeed, we can see the process of decadence going on around us every day—though it were ividuous to particularise—the waning popularity of well-known works of once high repute. Edition follows edition at intervals of five or ten years; new acts and new cases are noted; but the impulse derived from the creative genius of the author is spent, and the book becomes a mechanical compilation. Meanwhile a rival book has sprung up, and the older work "gins to pale its ineffectual fire." The perpetual putting of new patches on the old garment finds its Scriptural fulfilment. A book to live must, in fact, after a certain time, be rewritten; it must, that is, have a fresh inspiration breathed into it from a new master mind.

#### Court of Appeals of the District of Columbia.

CHARLES E. GRANT, ALIAS EDWARD GRANT, APPELLANT,

v.

THE UNITED STATES.

EVIDENCE; RES GESTÆ; INSTRUCTIONS; WITNESSES, CONTRADICTION OF.

1. In a prosecution for homicide, declarations made by the deceased immediately after the receipt of the fatal wound and while blood was flowing therefrom, that "I am cut to death; Eddie (the defendant) has cut me to death," held admissible as part of the res gestæ.
2. Where the mother of defendant, testifying in his behalf, stated that defendant and deceased were always friendly, and that she had never heard him threaten her or say he would take her life, it is competent on cross-examination to ask her if she had not said, immediately after the death of deceased, that she had for a long time tried to prevent defendant from killing deceased in her house, and, upon her denial, to introduce evidence to contradict her.
3. An instruction given on behalf of the Government held not to be erroneous, there being evidence to which it was applicable.
4. It was claimed by defendant that deceased struck him in the nose, and when he pushed her away, had "grabbed him in the privates," and upon this an instruction as to the law of self-defense was requested. Held, that the court did not err in refusing the instruction, there being no evidence to which it was responsive; and that an instruction to the jury that if defendant was assaulted by deceased, as claimed by him, and that provocation was sufficient to cause him to lose control of himself and throw him into a sudden passion, and in that passion and without malice he struck the fatal blow, he was guilty of manslaughter, was all that he had a right to under the evidence.

No. 1725 Decided October 16, 1906.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, holding a criminal court, entered upon a verdict finding him guilty of murder in the first degree. Affirmed.

Mr. J. A. O'Shea and Mr. H. I. Quinn for the appellant.

Mr. D. W. Baker and Mr. James M. Proctor for the United States.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

The appellant was tried under an indictment charging him with the premeditated murder of one Eva Barnes on December 16, 1905, convicted of murder in the first degree, and sentenced to death on April 27, 1906.

The Government offered evidence tending to show, that the appellant and Eva Barnes were together at the house of Florence Anderson in Blagden's Court on the night of December 16, 1905. That appellant had a knife with which he had been pairing his nails, and the parties were then apparently friendly. That in the course of some dispute about the possession of the knife, which Eva Barnes wanted, the appellant said: "I will cut hell out of you." That the knife was taken from appellant by one William Crew who gave it to Eva Barnes, and she placed it in her stocking. That they were afterwards told to leave the house, which they did. That thereafter one Nolan, who was in company with two other men, Brown and Lee, met them in the alley as they left the house aforesaid. That Eva Barnes called to Nolan. He did not



go to her and she came to him. Appellant called to her that "she had better come." He had a knife, with a boat-shaped blade, in his hand. Eva Barnes returned to the appellant and the other parties went up the alley to their homes. George Brown, one of the aforesaid persons, said that appellant and Eva Barnes were near a "Jew store" about sixty feet from the Barnes house. This witness corroborated Nolan generally, and said that he went then into the house where he and Nolan lived. That he had been in long enough to remove his neck-tie, collar, and top shirt when he heard Eva Barnes, whose voice he recognized, push against the door and "holler" at the door: "Oh, mama, mama; I am out to death; Eddie has cut me to death." Witness ran to his door and saw Eva Barnes at her mother's door, a few feet away. She was bleeding from a wound in her bosom. This evidence was objected to by the appellant.

One Elizabeth Hawkins testified that she had known the parties for six or seven years, and had seen appellant beat and kick Eva Barnes many times; had once seen him cut her in the mouth with a knife. That she had seen Eva Barnes talking to Nolan on the night of December 16. That she had been in her house, near-by the Barnes house, about five minutes, and had heard a "terrible loud squeal" from some person. She looked out of the window and saw appellant running by the alley towards the street. Harriet Barnes, the mother of Eva, testified that in consequence of what Eva had told her, she searched for and found a knife near the Jew's steps. The knife was given to a policeman on the same night, who testified that it was stained with blood. Mary Barnes testified that appellant treated Eva badly and that she had seen him beat her more than once. That during the winter she had heard him tell Eva that if he caught her with another man he would kill her. That witness was with her mother, Harriet Barnes, when the latter picked up the knife. Sarah Seifus testified that on the Thursday before the assault she heard Eva Barnes say to appellant, "Don't kill me," and he said to her: "I am going to kill you; it won't be long before I do, and when I do cut you up, I will cut you up for fair." Another witness testified to threats of appellant to kill deceased. Evidence was introduced tending to show that Eva Barnes died shortly thereafter from the wound inflicted with a knife on December 16, 1905.

Two policemen, who arrested the appellant on the night of December 16, testified that he told them he had cut Eva Barnes because she had stuck a hat pin in him. Another policeman testified that after the coroner's inquest, appellant told him that Eva Barnes "had gotten hold of his privates and he had to stab her to make her let go."

On behalf of the appellant, his mother, Vina Grant, testified that she had seen him and Eva Barnes together on the night in question; that they had always been friendly; that she never heard them quarrel, or him threaten her or say that he would take her life. Upon cross-examination, the witness, having said that she had gone to the Barnes house the night that Eva died, was asked if she had not there said, in the hearing of Georgiana Barnes, that she hoped they

would not blame her, and that she had long tried to prevent Eddie from doing this in her house. This cross-examination was objected to as immaterial and irrelevant.

Appellant's evidence, offered on his own behalf, is recited in the bill of exceptions as follows: "That on the night of December 16th he had been sent for by the deceased; that they left the Anderson house; that they walked up the alley to a lamp-post; that defendant had some words with deceased about being in a hurry to get home; that deceased struck him on the nose; that he pushed her from him; that she then grabbed him in the privates, and he took the knife which she had had early in the evening and stabbed her, as he thought, in the arm; that he then threw the knife down, and ran out of the alley; that he was arrested later in the evening; that he had been in the workhouse four times, twice for 15 days, and twice for 30 days; that the Thursday preceding the stabbing he was home all night; that he does not remember telling Officer Adcock that the deceased stuck him with a hat pin; that he may have said that but does not remember.

"Cross-examination: That he had never cut deceased in the mouth or on the hip; that he had never kicked her; never threatened her; but had struck her on several times."

In rebuttal, Georgiana Barnes testified that Vina Grant, mother of appellant, came to the house on the night of Eva's death, and said: "I hope you have no hard feeling against me, as I have tried for a long time to prevent Eddie from doing this in my house." This evidence was objected to by the appellant.

In connection with the general charge, the court gave this special instruction to the jury at the request of the District attorney: "If the jury find from the evidence that the defendant had formed a purpose to kill the deceased if a certain event happened, and on the happening of that event he put his previously formed purpose into execution, then the crime is murder in the first degree; even though they do not find that the purpose to kill existed continuously from the time of its formation until its execution, unless they also find that before the killing he had abandoned such purpose." This instruction was excepted to on the ground that there was no evidence to warrant it.

Appellant requested seventeen instructions, defining the presumption of innocence, murder in the first and second degrees, manslaughter, and the law of self-defense. Eleven of these were given and six refused; appellant excepting to the refusal of each of the latter. The court gave the general charge, no part of which was excepted to.

1. The first assignment of error relates to the exception taken to the evidence of the declarations of the wounded woman as given by the witness Brown. We are of the opinion that there was no error in admitting the declarations as part of the *res gestæ*. They were made immediately after the receipt of the fatal wound and while the blood was flowing therefrom. The time at, and the circumstances under, which they were made reasonably indicate that they were spontaneous, and exclude the idea of deliberation or design. Many authorities sustaining their admissibility are reviewed in the

following cases in this court: *Snowden v. U.S.*, 2 App. D. C., 80; 22 Wash. Law Rep., 74; *W. & G. R. R. v. McLane*, 11 App. D. C., 220; 25 Wash. Law Rep., 485; *Patterson v. Ocean A. & G. Corp.*, 24 App. D. C., 46, 66; 33 Wash. Law Rep., 274.

2. The witness, Vina Grant, having testified that her son, the appellant, and the deceased had always been friendly, and that she had never heard him threaten her, or say that he would take her life, we think that it was not immaterial or irrelevant to ask her if she had not said at the place of and immediately after the death of deceased, that she had tried for a long time to prevent him from killing deceased in her house. Nor, when she denied such declaration, was it error to permit the introduction of evidence to contradict her. The declaration was not, as contended on behalf of the appellant, the expression of an opinion or a suspicion that the accused intended to kill the deceased, but the statement of the fact that the witness had tried to prevent him from killing her. If witness had tried to prevent him from killing deceased in her (witness) house, then it was in contradiction of her evidence that they had always seemed to be friendly, and that he had never threatened her with violence or death.

3. In view of all the facts and circumstances given in evidence, and the general charge of the court, to which no exception was taken, defining the conditions of premeditation and deliberation necessary to constitute murder in the first degree, the special instruction, given at the request of the prosecution, was neither necessary nor important. But it was not error to give it, because there was evidence tending to show the following facts to which the instruction applied: Accused had threatened to kill deceased if he saw her with another man. Immediately before the infliction of the fatal wound, she went to talk to another man in the alley. Accused called to her to come to him, and while awaiting her was seen to have a large, open knife in his hand with which he stabbed her a few moments later.

4. The sixth special instruction asked by the appellant, on the exception to the refusal of which the last error is assigned, reads as follows: "If the jury believe that the accused at the time he drew the knife, had, in good faith, a reasonable belief founded upon the facts as they appeared to him at that time, that he was in imminent peril of his life or in great danger of great bodily harm at the hands of the deceased, from which he could not reasonably save himself except by the use of the force he did use, then his act is justifiable, even if his belief was a mistaken one, and the verdict of the jury should be one of acquittal."

Without considering the several elements of the law of self-defense contained in this instruction, it is sufficient to say that there was no evidence to which it was responsive. The only evidence of provocation or excuse for inflicting the deadly wound, is that given by the defendant. He said that the deceased struck him on the nose, and when he pushed her away "grabbed him in the privates." He did not say that he suffered pain from this assault, or that it caused an apprehension of serious bodily injury so imminent as to suggest the use of the

deadly knife instead of ordinary superior physical force.

After refusing the instruction, the court charged the jury as follows: "If you believe from the testimony that this defendant was assaulted in the manner which he has detailed, and that provocation was sufficient to cause him to lose control of himself and throw him into a sudden passion, and in that passion he struck the fatal blow, without malice, then you will find him guilty of manslaughter." This instruction was all that the accused had any right to demand under the evidence, and there was no error in refusing that asked by him.

For the reasons given, the judgment will be affirmed.

Affirmed.

EUGENE GROS, APPELLANT,

v.

CLARENCE F. NORMENT ET AL.

APPEALS; TIME FOR FILING TRANSCRIPT OF RECORD.

Where a bond on appeal to this court was approved and filed May 4, 1906, and the transcript of record was not filed in this court until August 27, 1906, and no order was made by the court below extending the time for the filing of such transcript, held that the appeal would be dismissed for failure to file the transcript of record within the forty days from the time of perfecting the appeal as prescribed by Rule 15 of this court.

No. 1723. Decided October 18, 1906.

HEARING on motion to dismiss an appeal. Motion granted.

*Mr. Geo. E. Hamilton, Mr. M. J. Colbert, and Mr. John J. Hamilton* for the appellees, for the motion.

*Mr. I. J. Mackey* for the appellant, opposed.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

The appellees have moved to dismiss this appeal on the following grounds: 1st, That the bill of exceptions contained in the transcript was not signed within the time required by Rule 55 of the Supreme Court of the District of Columbia, and that the same had not been extended by that court; 2d, that the transcript of the record was not filed in this court within forty days, as prescribed by Rule 15 of this court.

It appears that the appeal bond was approved and filed May 4, 1906, and the transcript of record was not filed in this court until August 27, 1906. It also appears that the bill of exceptions was not approved and filed until August 15th, and that no order extending the time for settling the same had been entered in the Supreme Court of the District, as provided in Rule 55 thereof. It appears that the justice of the Supreme Court presiding on the trial concluded the business of his term and left the District on June 13th for his vacation. The bill of exceptions was not presented to him, nor was any application made for extension of the time. On June 21, 1906, the appellant presented a bill of exceptions to the justice of the Supreme Court of the District then, under the practice of that court, presiding for the purpose of transacting any necessary business in every one of the special terms of that court. An application was made to him for an extension of the time

for settling the bill. This application was denied for reasons that do not appear in the record.

It is unnecessary to consider the effect of the absence of the trial justice after June 13, and of the lodging of the bill of exceptions with his successor on June 21, and the effect of the order overruling the application for extension of the time. The time for settling the bill of exceptions is provided in the rules of the Supreme Court of the District of Columbia. Regardless of the question in respect of obtaining a settlement of the bill of exceptions, Rule 15 of this court provides that the transcript of the record in all such appeals shall be lodged with the clerk of this court within forty days from the time of perfecting the appeal, unless an extension of the time shall have been obtained by order entered, before the expiration of the period, by one of the justices of the Supreme Court of the District. The order for the extension may be made by any one of said justices and is not limited to the one presiding on the hearing of the particular case. No such extension of the time was applied for. For the reason of the failure to file the transcript within the time required by Rule 15, we are constrained to grant the motion to dismiss the appeal. *D. C. v. Humphries*, 11 App. D. C., 68, 78: 25 Wash. Law Rep., 398.

As said by Chief Justice Alvey in that case: "The rule of court is the law of the court as it is of the parties, and there is no dispensing power in the court simply to meet what is supposed to be the pressing exigency of a particular case. The appeal taken in this case immediately upon the entry of the judgment was in no manner dependent upon the settlement and signing of a bill of exceptions to the ruling of the court upon the evidence. . . . The rule would be of no force or effect if the transcript could be filed at any time after the appeal entered. The time prescribed by the rule must be given full force as a limitation of time for filing the transcript; that is the clear meaning and tenor of the rule."

The appeal will, therefore, be dismissed, with costs.

It is so ordered.

#### ◆◆◆◆◆ Duress by Labor Union.

A union of bricklayers and plasterers voted to refuse to handle brick from any manufacturer delivering brick to boss masons employing non-union men, and notice of the resolution was served on the manufacturer. Subsequently a manufacturer sold brick to a boss mason employing non-union men. Learning of this, the union voted to assess damages of \$100 against the manufacturer. Afterwards the manufacturer began to deliver brick to a boss mason employing union men. The union demanded payment of the \$100 under a threat that unless the same was paid the men employed by the boss mason would refuse to handle the brick, and payment was made. In *March v. Bricklayers' & Plasterers' Union No. 1*, 63 Atlantic Reporter, 291, it is held that this payment was extorted by means of threats, in violation of the statute of Connecticut, punishing any person who shall threaten to compel another against his will to do an act which such person has a legal right to do.

#### Life Insurance Policy — Declaration of Forfeiture — Remedy of Holder.

In *Kelley v. Security Mutual Life Insurance Company*, recently decided by the Court of Appeals of New York, and reported in the New York Law Journal, it was held that when a mutual life insurance company declares forfeited a policy issued by it to a husband payable at his death to his wife, the holder denying the forfeiture, can not maintain an action of law for breach of contract and recover as for the present value of the policy, inasmuch as there can be no breach until the time for performance, viz., on the death of the husband. The remedy in such a case, if sought during the lifetime of the husband, is by action in equity to compel the company to recognize the contract as in force. The court in its opinion said:

The case made by the complainant was not in equity to relieve from forfeiture and reinstate the policy, but purely at law to recover damages for the breach of its contract by the defendant. The only promise made by the defendant in the contract was to pay a sum of money on the death of the plaintiff, but no breach of that promise was alleged. The plaintiff is still living and nothing is yet due upon the contract, according to its terms. What breach was alleged? The only allegation on that subject is that the defendant wrongfully declared the contract "void and forfeited," denied that the plaintiff had "any rights thereunder," and refused "to continue said policy in force." How or why, when, to whom or by whom the defendant declared the contract forfeited, or denied the plaintiff's rights thereunder, or refused to continue it in force, is not stated. There is no allegation of a refusal to receive premiums, or give receipts therefor, or that the defendant had never recognized its contract, or that it had not retracted its repudiation, or that it was in such a position that it could not retract. The pleader was satisfied with the conclusion that he set forth. This was not a breach of the contract, because the time for performance by the defendant had not arrived. An attempt to repudiate such a contract does not make it due. If the maker of a promissory note, given for borrowed money and due one year after date, notifies the holder the next day that he repudiates it and will not pay it, can the holder sue at once? Can a mortgagor make his mortgage due before the law day by repudiating it in advance?

The rule that renunciation of a continuous executory contract by one party before the day of performance gives the other party the right to sue at once for damages is usually applied only to contracts of a special character, even in the jurisdictions where it obtains at all. It is not generally applied to contracts for the payment of money at a future time, and in some States the principle is not recognized in any way whatever. *Davids v. Newton*, 114 Mass., 530; *Stanford v. McGill*, 6 N. Dak., 536; *Carstens v. McDonald*, 38 Neb., 858; *King v. Waterman*, 55 Neb., 324. In other States and in the Federal

courts the principle is adopted but applied with caution. *Roehm v. Horst*, 178 U. S., 1, 17, 18; *Schmidt v. Schnell*, 14 Ohio, 153; *Brown v. Odill*, 104 Tenn., 250; *Roebeling's Sons v. Fence Co.*, 130 Ill., 660; *Unexcelled Fire Works Co. v. Polites*, 130 Pa. St., 536. In this State it seems to be limited to contracts to marry (*Burtis v. Thompson*, 42 N. Y., 246), for personal services (*Howard v. Daly*, 61 N. Y., 362) and for the manufacture or sale of goods (*Windmuller v. Pope*, 107 N. Y., 674; *Nichols v. Scranton Steel Co.*, 137 N. Y., 471); at least we have not extended it to mutual life insurance policies, perhaps for the reason that the question of fact opened to unscrupulous persons by such extension might undermine the solvency of the company and inflict gross injustice upon the other policyholders.

The plaintiff alleges a breach only by anticipation. We held directly against his contention in a recent case which we regard as controlling. *Langan v. Supreme Council Am. L. of H.*, 174 N. Y., 266. That was an action at law founded upon a certificate of insurance, whereby the defendant promised upon the death of the plaintiff to pay his wife a sum not exceeding \$5,000. The plaintiff alleged performance until the "defendant by its wrongful act broke the said contract and declared the same void." He further alleged that the defendant had "failed to carry out the conditions of the contract by declaring that it will not perform the contract or pay the insurance agreed to be paid, and that upon his death, the beneficiary will not then be entitled" to the sum specified, "and that by reason of the breach of the aforesaid contract by defendant, plaintiff has sustained damages in the sum of \$5,000." A judgment for \$1,505.96, "the present value of the policy," was affirmed by the Appellate Division, but reversed by this court upon the ground that "there was no breach of contract, . . . which justified an action for damages; that the action of the plaintiff" in tendering performance "preserved the contract of insurance as it was; that he was not, thereupon, compelled to a course of inaction, but might resort to a court of equity, . . . and compel the defendant to live up to its contract."

The principle of that case controls this. Both actions were at law to recover damages for the breach of the same kind of a contract and in the same way. As we held that an action at law would not lie in that case because there was no breach and that the remedy of the plaintiff was in equity, we are compelled to hold the same way in this case. The plaintiff had no right to sue for damages before the time for performance by the defendant had arrived. He had sustained no damages, for the policy was still in force, and if it refused to recognize its obligation thereunder he could compel recognition by a judgment exactly adapted to the situation.

#### Bankers' Lien—Securities Deposited for Special Purpose.

In *Van Zandt v. Hanover National Bank*, decided October, 1906, by the United States Circuit Court of Appeals for the Second Circuit, and reported in the *New York Law Journal*,

it is held that a general bankers' lien does not attach upon securities deposited with the banker for a special purpose, as upon notes sent him by mail by the payee with a request that they be discounted, such request being refused. No lien arises in such a case from a previous agreement that the bank shall have a lien upon all notes of a payee "deposited with the said bank, or which may be in any wise in said bank, or under its control, as collateral security for loans or advances already made or hereafter to be made, to or on account of the undersigned, by said bank, or otherwise." It is further held that in an action at law for conversion of promissory notes an equitable defense can not be pleaded. The court in its opinion said:

The question whether the plaintiff (as receiver of the American National Bank of Abilene), or the defendant was entitled to the possession of the four promissory notes which came to the hands of the defendant in January, 1905, depends upon the following facts: The defendant had been for some time the New York correspondent of the Abilene Bank, and the Abilene Bank had kept with defendant a deposit account, making deposits and withdrawing them by checks, bills of exchange, etc. From time to time it forwarded notes or commercial paper made by various persons and owned by itself indorsing said paper, and offering it to the defendant for sale with a request that in case the defendant purchase the paper the proceeds thereof should be deposited in the deposit account. November 27, 1903, the Abilene Bank signed a written contract of hypothecation by which it agreed with the defendant "that all bills of exchange, notes, . . . money and property of every kind owned by the undersigned . . . deposited with the said bank, or which may be in any wise in said bank, or under its control, as collateral security for loans or advances already made, or hereafter to be made, to or for account of the undersigned, by said bank or otherwise, may be held, collected, and retained by said bank until all liabilities present or future of the undersigned . . . of every kind of said bank, now or hereafter contracted, shall be paid and fully satisfied."

In January, 1905, the four notes in controversy, made by third persons and indorsed by the Abilene Bank, payable, three of them respectively, in ninety, sixty, and thirty days, and one of them in six months, were forwarded by it from Abilene, Tex., to the defendant by mail with instructions: "We hand you for discount and credit." The defendant received two of them January 14th and two of them January 16th, and immediately notified the Abilene Bank, by telegrams and letters, that the paper was not satisfactory. After the first two notes had been mailed to the defendant, but before it had received notice of the defendant's refusal to discount them, the Abilene Bank drew a check upon the defendant for \$3,825.45. This check was paid by the defendant January 17th, resulting in an overdraft of the account of the

Abilene Bank of about \$3,500. Thereupon the defendant, without consulting the Abilene Bank, credited the account of that bank with \$3,500, and notified the latter by mail that it had made a "temporary loan" of that amount "against collateral in our hands." Before this letter reached Abilene by the ordinary course of mail the Abilene Bank had failed, and the plaintiff had been appointed its receiver by the Comptroller of the Currency.

Upon these facts it is plain that the plaintiff was entitled to recover unless the terms of the contract of November 27 authorized the defendant to treat the notes as a security in its hands for an overdraft or indebtedness by the Abilene Bank. In the absence of a contract of that purport it would have been the duty of the defendant, upon receiving the notes and concluding not to discount them, to return them to the Abilene Bank or hold them awaiting further instructions and subject to the disposition of that bank. The Abilene Bank had not asked for a temporary loan, and was entitled to have its notes used as it had directed, so as to realize their full proceeds, and if not so used it was entitled to make such disposition of the notes as it saw fit. As the notes had been sent to the defendant for a specific use they did not become subject to a general banker's lien. Such a lien does not attach upon securities which are deposited with the banker for a special purpose. *Armstrong v. Chemical Nat. Bank*, 41 F. R., 234; *Brandao v. Barnett*, 12 Cl. & Fin., 787; *Reynes v. Dumont*, 130 U. S., 354; *Wyckoff v. Anthony*, 90 N. Y., 442.

The language of the agreement of November 27 is susceptible of different interpretations. It may be read as follows: "That all . . . notes . . . owned by the undersigned . . . deposited with said bank . . . or which may be in any wise in said bank or under its control as collateral security . . . or otherwise . . . may be held, collected, and retained by said bank." Read in this way it is capable of being construed as a pledge of all notes belonging to the Abilene Bank that may in any way come into the hands of the defendant, even though they come accidentally or against the will of the Abilene Bank. But such a reading omits a material part of the instrument, and when that is supplied the instrument reads that all notes "deposited with said bank . . . or under its control, as collateral security for loans or advances already made, or hereafter to be made, to or for account of the undersigned by said bank, or otherwise, may be held," collected, etc. With these words supplied, the words "or otherwise" may be read as referring to the nature of the liability for which the collateral is security, and as meaning to pledge the collateral not only for loans and advances, but also for any liabilities otherwise arising, such, for instance, as that of an indorser or surety upon the commercial paper of third persons. If the agreement had been intended to pledge all securities belonging to the Abilene Bank that might come in any manner to the hands of the defendant, or even of all that might rightfully come to its hands, that intention could have been manifested unmistakably, and in very simple terms by omitting the words "deposited" and "as collateral

security," etc. The latter are descriptive words which identify the securities which the defendant may hold and collect by reference to the purposes for which they come into its hands. If the contention for the defendant in error is correct these words were used unnecessarily.

"The language of a contract is always presumed to be used with reference to the matter in the minds of the parties when they contract; therefore words of broad signification will be interpreted with reference to the subject-matter of the contract unless the intention is clear that they should be taken in the broad meaning." *Jones, Construction of Contracts*, sec., 220. The parties here were contracting with reference to notes, property, etc., which should be deposited by the Abilene Bank with the defendant or should come under its control as collateral security for certain obligations and liabilities; and the general words "or otherwise" should be held to relate to notes and property which should come to the hands of the defendant by way of deposit or collateral security, or some other kind of bailment.

It is apparent from the facts that the Abilene Bank is not named in the instrument otherwise than as "the undersigned," that it was one for general use prepared by the defendant. Such instruments are always to be construed most strictly against the party by whom they have been prepared. This rule was applied to an instrument like the present one in *Gillet v. Bank of America*, 160 N. Y., 549. It is not to be inferred in the absence of clear terms that the Abilene Bank intended to authorize the defendant to keep and collect such of its notes or property as it did not intend to part with, or such as might be obtained by the defendant without its consent.

The notes in controversy were never deposited by the Abilene Bank with defendant, nor did they come into its hands as collateral security within the commonly accepted meaning of these terms. They were temporarily in the hands of the defendant under an option to purchase them. We conclude that they did not come within the terms of the pledge and that the defendant did not obtain a lien upon them.

If the check drawn by the Abilene Bank upon the defendant which caused the overdraft of its account had been drawn with knowledge of the defendant's refusal to discount the notes a different question would be presented; but it is fair to assume that this check was drawn in the expectation that before its presentation the notes would have been discounted and the proceeds credited to the Abilene Bank.

The contention for the defendant in error that it was entitled to set-off or counterclaim the indebtedness owing to it by the Abilene Bank when the latter became insolvent is wholly untenable. Such a defense is not available in an action at law for conversion, and if the defendant had any right of equitable set-off, this should have been asserted by a bill in equity.

The assignment of error based upon the ruling directing a verdict for the defendant seems to be well taken, and accordingly the judgment is reversed.

Justice blanks of every description for sale at the Law Reporter Printing Co., 518 Fifth Street.

Legal "Janizaries."  
[New York Law Journal.]

In his excellent address before the New Hampshire Bar Association on Monday last, Mr. Edward M. Shepard proposed some far-reaching changes in the organization and management of corporations with a view of diminishing the possibilities of legal abuse and public deception. These matters may properly await a more careful reading and thoughtful consideration before being discussed. Certain questions of professional ethics which were treated are, however, always timely, and were never more so than at present. Among the striking passages of the address is the following:

"The relations of great corporations to the lawyers who have advised them have sometimes, perhaps often, seemed sinister to the American people. I know, as no doubt you do, enough of that body of lawyers to realize that among them are men of all kinds, and that some are merely acute and high-class janizaries, whose consciences are for hire with their professional abilities. They are, however, exceptions. It is my long and deliberate belief that in respect of disinterested wisdom on public questions or of a high and rigorous standard of morals for public trusts and the duties of citizenship no man can be found in any calling superior, in the average, to the men who have professionally served corporate interests. To say the contrary would disparage the discernment of the corporations even more than it would the morality of the lawyers. The present Secretary of State of the United States, for instance, at the time of his appointment to his present position, represented, perhaps, as many corporate interests as any American lawyer."

Just now hypocritical and blatant demagogues are striving to inaugurate a reign of terror against "corporation lawyers." The public have been scandalized by many revelations of corporate villany and the criminal use of wealth, and the service rendered by legal "janizaries" in engineering immoral and substantially, if not technically, illegal schemes of corporate enterprise has been much in evidence. The President of the United States, in a public address a few months ago, spoke of the aid lawyers had furnished in evading or breaking the laws in a vein suggesting that he regarded the bar in general as of easy professional virtue. Altogether the situation has been favorable for convincing the average citizen that employment of lawyers in the public service should be discouraged. Certain newspapers and political orators have gone so far as to preach in effect that a man is ineligible to political office who has ever rendered service, no matter how legitimate to corporations.

As a matter of fact, under present conditions, a lawyer of mature years who has never performed important work for a corporation must be ranked either as a man of mediocre talents or as a professional oddity. Also, it would seem that a continuation of the preponderating influence of lawyers in American public life is inevitable. Mr. Shepard quotes language written by De Tocqueville, in 1830, showing the political ascendancy of the bar even in those days, and arguing that its results were good. He also gives a list of eminent American

statesmen in more recent times, including Lincoln, Tilden, Harrison, Mr. Cleveland and Secretary Root, who were well known as corporation lawyers while in private practice. Outside of the natural leadership of lawyers in matter of government, the fact that this is a nation of written constitutions will always render it essential that its statesmen shall either be lawyers or under the constant advice and influence of lawyers. It is, indeed, a serious handicap for an American statesman not to have had a legal training and some measure of practical experience at the bar.

It is to be hoped that the reproach which the "janizaries" have brought upon the entire profession may pass as quickly as have many other American delusions, and it is a matter of professional shame that some lawyers, out of considerations of personal advancement, have contributed to fostering the political distrust of the bar.

On the other hand, Mr. Shepard's closing remarks may well be produced:

"Every lawyer, by virtue of his very profession, holds a relation to public affairs over and above his relations as a mere citizen. The men of our calling are, as men of many other professions and trades are not, bound to promote a sound framework of laws and jurisprudence for our civilization. The enormous share which corporate organization now has in modern industry, its enormous influence upon every phase of modern life, inexorably impose upon lawyers who advise and guide corporations a special and weighty and most honorable duty. If the men of our profession make it clear to the American people that in their public relations they are concerned to enforce truth and publicity upon corporations and upon all who derive from our laws any sort of franchise or right, we may, I think, count it certain that the justifiable criticism and much of the ignorant hostility and suspicion from which lawyers suffer will disappear."

It is certainly the duty of the bar to frown upon the sleek professional pharisee who has enriched himself through his share of corporate plunder. The legal "janizary," no matter how respectable externally or how eloquent in moral sentiment, is generally well known to his associates at the bar. He ought to be practically ineligible to office in bar associations and hopeless of any form of expression of professional confidence or respect.

Libel—Action by Corporation—Language Libelous  
Per Se.

In *Memphis Telephone Co. v. Cumberland Telephone & Telegraph Co.*, decided by the United States Circuit Court of Appeals, Sixth Circuit (June, 1906, 145 Fed., 904), it appeared that a declaration in libel alleged that, after defendant had operated the sole telephone exchange in the city of Memphis for twenty years, plaintiff corporation was organized and granted a franchise to construct and operate a competing exchange; that when its exchange was two-thirds completed, and after it had secured thousands of subscribers, defendant caused to be published in a newspaper an article entitled "Support the Promoter," which proceeded as

follows: "It took the promoters twenty years after the art of telephoning was discovered to undertake the building of an exchange, and then only after trying to float twice its value in bonds and the same in stock. It will not take them twenty minutes to get out if they succeed in unloading this 'wad' of 'securities' on the 'dear public.'" This was followed by an appeal to the public to subscribe for defendant's service. It was held that the language of the article, given its natural and reasonable meaning, referred to the promoters of plaintiff, and could not be enlarged by innuendo to apply to the corporation itself; that so taken it was not libelous per se as against plaintiff, and would not support an action without an averment of special damages. The court said in part:

In determining whether a publication respecting a corporation is libelous per se or not, it is necessary to bear in mind that the injury to be redressed must be one to its property or business, resulting in pecuniary loss. It has no reputation in a personal sense, in the sense an individual has, and an imputation that certain members of the corporation have been guilty of acts which would injuriously affect their standing in society or render them liable to criminal prosecution does not constitute a libel upon the corporation itself. *Met. Saloon Omnibus Co. v. Hawkins*, 4 H. & N., 90; *Mayor, &c., of Manchester v. Williams*, 1 Q. B., 1891, 94.

In the present case it appears from the declaration that the defendant for many years owned and operated the sole telephone exchange in Memphis. In order to provide competition, the city of Memphis granted a franchise to William P. Curtis, his associates, successors, and assigns, to build and operate a new exchange. Accordingly, the plaintiff was incorporated, the building of a new exchange begun, and thousands of subscribers secured. When the exchange was more than two-thirds completed the publication was made. The publication is headed "Support the Promoter." This ironical expression evidently points to the new company or its promoters, and is intended to direct attention to what follows, which consists of three statements respecting the promoters of the new company, followed by an appeal for continued patronage by the old.

The three statements are these:

"(1) It took the promoters twenty years after the art of telephoning was discovered to undertake the building of an exchange; (2) and then only after trying to float twice its value in bonds and the same in stocks; (3) It will not take them twenty minutes to get out if they succeed in unloading this 'wad' of 'securities' on the 'dear public.'"

The publication concludes thus:

"Subscribe for the service of the Cumberland Telephone & Telegraph Company, Telephone Building, Madison street. It has been with you twenty years, and will be with you twenty more."

The innuendo applies the publication to the plaintiff and ascribes to the language a number of defamatory meanings. The doctrine is well settled that the office of an innuendo is to explain, but not enlarge or change, the sense of the words, *Cunningham v. Underwood*, 116 Fed., 803, 807, 53 C. C. A., 99; *Newell on Defa-*

*mation*, p. 619. Notwithstanding the innuendo, the natural meaning of the words must control. It is by ascertaining their natural meaning, and whether when thus taken they necessarily caused damage to the plaintiff, that we may determine whether they were actionable per se or not. While it is for the jury to say whether the language was used in the sense ascribed by the innuendo, this is only after the court has determined that the language will bear such meaning; in other words, that the words complained of can be reasonably construed in the sense placed upon them by the innuendo. *Blagg v. Stuart*, 10 Q. B., Ad. & El., 899; *Hunt v. Goodlake*, 43 L. J. C. P., 54, 29 L. T., 472; *State v. Smily*, 37 O. S., 30, 35. . . . Applied to the plaintiff, the statements are: First, that it took the plaintiff more than twenty years after the art of telephoning was discovered to undertake the building of an exchange; second, that the plaintiff undertook the building of an exchange only after trying to float twice the value thereof in its own stock and bonds; and, third, that it will not take the plaintiff twenty minutes to get out of business if it succeeds in selling to the public its stock and bonds at the fictitious value indicated.

There was nothing libelous in the first and second statements as so construed, and the third is inconsistent to the point of absurdity. Boiled down, the entire charge is that the plaintiff was trying to sell its stock and bonds at a fictitious value, and, if it succeeded, would retire from business. There is no charge that it was trying to do this by fraudulent means. The first portion of the charge is not libelous, because the company had a right to put its value upon its stock and bonds. It was not limited either in law or morals to the actual cost of its plant. The value of the stock of a quasi public corporation, such as a telephone company, is not measured by the cost of its plant. It is the use to which the plant is put—its earning capacity—which ultimately determines the value of the stock, and that, in turn, may serve as a guide to taxing officers in fixing the value of the plant. *Sanford v. Poe*, 37 U. S. App., 378, 895, 69 Fed., 546, 16 C. C. A., 805; *Adams Express Co. v. Ohio*, 165 U. S., 194, 225, 17 Sup. Ct., 305, 41 L. Ed., 683.

The absurdity of the concluding statement when applied to the plaintiff is apparent. That an organized telephone company, with an exchange practically completed and thousands of subscribers secured, which was trying to place its stock and bonds at a high figure, would instantly retire from business as soon as it should so dispose of them is unbelievable. The selling of its stock and bonds at a high price to the Memphis public would furnish it the very sinews of war needed for a successful fight with its competitor, the old company. With a well-filled treasury, and backed by local stockholders and bondholders interested in making their investments good, the natural thing for the company would be to "stay in" and not to "get out."

These considerations satisfy us that the language was intended for the promoters, and that the public would read it in that sense. So read, the assertion was that it took the promoters twenty years after the art of telephoning



was discovered to undertake the building of an exchange, that the promoters undertook to build an exchange only after trying to float twice its value in bonds and the same in stock of the new company, and that it would not take the promoters twenty minutes to get out if they should succeed in selling to the public the stock and bonds of the new company at this fictitious value. So understood, the meaning of the publication is logical and consistent. It was directed against the promoters responsible for the new exchange. Promoters usually get their profit in stock and bonds of the enterprise they organize, which they are desirous of selling to the public. As soon as they "unload," they ordinarily "get out." If there is any imputation in this language, it is limited to the promoters. There is no reflection upon the new company, upon its credit, its stability, or its service. If, for some extrinsic cause not appearing in the publication itself, the language did prove injurious to the plaintiff, this should have been averred, and the resulting special damages alleged and proved.

**"Strikes" as a Defense to the Performance of a Contract.**

[Central Law Journal.]

It is well settled that a "strike" will not excuse delay or neglect in performing a contract (*Hexter v. Knox*, 39 N. Y., Super. Ct., 109) unless there is provision in the contract that the occurrence of a strike shall exempt the party required to perform the terms of the contract by a day certain from the consequences of delay. *Milliken v. Keppler*, 4 N. Y. App. Div., 42, 38 N. Y. Supp., 738. In the case of *Milliken v. Keppler*, supra, the rule was laid down that where a building contract provides for the completion of the work by a specified time, "contingent upon strikes and boycotts," it protects the contractor against liability for unavoidable delay, so far as it is due to "strikes," and the "strikes" referred to are not limited to such as occur in the shops of the contractor.

The *Milliken* case was an action to establish a subcontractor's lien on a building in which the owners filed a counterclaim for delay in completing it. It appeared that the contract was dated July 7, 1892. The contract made the time of completion the essence of the contract, but this provision was made contingent on strikes and boycotts. The plaintiff, who was to do the iron work on the building on which the lien was sought, contracted for the iron from the Columbia Iron and Steel Co., who agreed to furnish the iron on a certain date. This latter company was unable to comply with its contract to furnish the iron work at the time required, owing to strikes at the foundry. The court held that the provision in the contractor's agreement with the owners of the building exempting him from liability for failure to complete the building on time applied, if the delay was occasioned by "strikes or boycotts," to strikes among employees other than his own, which in any manner hindered or interfered with the performance of his contract, as, for instance, a strike among the employees of any material-man with whom he is under contract to supply the materials

necessary for the construction of the building. The court said: "The performance of the contract was made contingent upon strikes and boycotts. The appellants claim that the strikes referred to were only such as might occur in the shops of the contractor. We see no reason for thus limiting the words. The obvious intent in inserting the clause was to protect the contractor from liability for delays which it could not help, so far as they should be due to strikes. There is no reason to believe that any strike which had a legitimate tendency to retard the contractor was not meant to be covered by the expression in the contract. It does not, however, follow from this that the contractor was at liberty to order material from a striking factory, and then rely upon this clause for its protection. A duty rested upon it to perform the contract if possible, and to exercise care, diligence and skill to this end. All that was obtained was immunity from the general rule of law which refuses to accept inevitable unforeseen accidents as an excuse for the non-performance of an absolute agreement." Still a further limitation must be put upon the exemption of a contractor for failure to perform his agreement at the time stipulated because of strikes or boycotts, viz.: Such strike or boycott must not be occasioned by his own arbitrary act in refusing to pay his workmen the wages agreed upon. *McLeod v. Genins*, 31 Neb., 1, 47 N. W. Rep., 473.

It often becomes important to know what the courts judicially define as a "strike," especially in construing contracts in which a "strike" is expressly stipulated to be a complete defense to an action for damages for failure to complete the performance of any duties of either party under the contract by a specified time.

The most succinct judicial definition is that by the English Court of Appeals in *Farrer v. Close*, L. R. 4 Q. B. 602, loc. cit. 612: "A 'strike' may be defined as a simultaneous cessation of work on the part of the workmen, and its legality or illegality must depend on the means by which it is enforced, and upon its objects."

The American decisions are a little more explicit. Thus, a "strike" has been judicially defined as "a combined effort among workmen to compel the master to the concession to a certain demand by preventing the conduct of his business until compliance with the demand. *Farmers Loan & Trust Co. v. Northern Pacific R. R. Co.*, 60 Fed. Rep. 803, loc. cit. 819. So also in *Delaware, etc., Railroad Company v. Bounds*, 58 N. Y. 573, loc. cit. 582, a "strike" is defined as "a combination among laborers employed by others to compel an increase of wages, a change in the hours of labor, some change in the mode or manner of conducting the business of a principal, or to enforce some particular policy in the character or number of the men employed, and the like." Probably the best definition of a "strike" is given in the recent case of *Longshore Printing Co. v. Howell*, 26 Oreg. 527, 38 Pac. Rep. 547, where the court says: "A 'strike' is defined as the act of quitting work, specifically, such an act by a body of workmen, done as a means of enforcing compliance with demands made on their employer. It is applied commonly to a combined effort on the part of a body of workmen employed by the same master

to enforce a demand for higher wages, shorter hours, or some other concession, by stopping work in a body at a prearranged time, and refusing to resume work until the demanded concession shall have been made, and is not necessarily unlawful, and does not necessarily engender a breach of the peace."

What is not a strike is referred to in the case of *Arthur v. Oakes*, 83 Fed. Rep., 310, loc. cit., 327, where the court says: "A combination among employees having for its object their orderly withdrawal in large numbers, or in a body, from the service of their employer on account simply of a reduction in their wages, is not a strike within the meaning of the word as commonly used." This limitation of the definition of the term "strike" is quoted with approval in the recent case of *State v. Kreutzberg*, 114 Wis., 530, 90 N. W. Rep., 1098.

**Corporations—Liability for Slander—Scope of Authority of Agent or Employee.**—In *Sawyer v. Norfolk & S. R. Co.*, decided by the Supreme Court of North Carolina in September, 1906 (54 S. E., 793), it was laid down that a corporation may be liable for slander committed by its agent or employee. It was, however, held that where plaintiff, desiring employment with defendant railroad company to look after trucking, went of his own accord to defendant's superintendent, who had charge of employing persons for such work, and the superintendent, in addition to stating that he did not want him, slandered him in regard to his former work for the company, defendant is not liable for the slander, there having been no such relation between them that defendant owed plaintiff any special duty, and slandering plaintiff not being within the implied authority of the superintendent.

**Customs and Usages—Damages.**—In *Chicago, M. & St. P. Ry. v. Lindeman*, decided by the United States Circuit Court of Appeals, Eighth Circuit (143 Fed., 946), the following is the syllabus by the court:

"A custom must be uniform, certain, and known, or so notorious that a person of ordinary prudence, in the exercise of reasonable care, dealing with its subject, would have been aware of it.

"Where the plaintiff's witnesses testify that there was a custom of doing an act in a certain way, and that they followed this custom, and defendant's witnesses testify that they performed the act at the same place, during the same time, in another way, and no witness contradicts the testimony of the latter or testifies that the alleged custom mentioned by the plaintiff's witnesses was either uniform or universal, it is held that the evidence is insufficient to warrant a finding by a jury that the alleged custom was uniform, and hence the question of its existence should not have been submitted to them.

"The liability for future damages for the wrongful infliction of a personal injury is strictly limited to compensation for such pain and other evil effects as are reasonably certain to result from it. Possible, even probable, future effects are too remote and speculative to form the basis of legal recovery.

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## RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

## Legal Notices.

### FIRST INSERTION.

Samuel Maddox, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Thomas Culhane, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 5th day of November, 1906, at 10 o'clock A. M., as the time, and said courtroom as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 18th day of October, 1906. BRIDGET M. CULHANE, administratrix, by Samuel Maddox, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,190. Admn. [Seal.] 42-31

William Hitz and Wm. A. Kenney, Attorneys

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Walter W. Burdette, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 9th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 9th day of October, 1906. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary; WILLIAM HITZ, 1817 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,826. Administration. [Seal.] 42-31

## Legal Notices.

D. W. Baker, Solicitor

In the Supreme Court of the District of Columbia,  
The United States of America v. John F. Gaynor,  
William T. Gaynor, Anson M. Bangs, Henry Clews  
& Company, Henry Clews, James B. Clews, John  
H. Clews, Charles P. Holzderber, Leslie M. Shaw,  
Secretary of the Treasury of the United States.  
Equity No. 28,455. Docket No. 58.

The object of this suit is to restrain and enjoin Leslie M. Shaw, Secretary of the Treasury of the United States, from delivering twenty-five U. S. bonds, five per cent, matured February 1, 1904, together with all coupons and any increment or interest thereof, and presented to the Secretary of the Treasury, on July 12, 1903, for payment, unto Henry Clews & Company, or the defendant; Anson M. Bangs, or the defendants John F. Gaynor and William T. Gaynor, or any one for them; or from paying over to any of the above mentioned defendants the proceeds of said bonds; and to obtain from the court its final decree that the said twenty-five U. S. bonds, together with all coupons and any increment or interest thereof, shall be impressed in the hands of the said Leslie M. Shaw with a trust for the use and benefit of the complainant, the United States of America, and that the said court shall decree that the said bonds are held by defendants, Anson M. Bangs, Henry Clews & Company, representing the defendants, John F. Gaynor and William T. Gaynor, in trust for the complainant, United States of America, as the investments of part of the proceeds of a certain fraudulent and criminal conspiracy between the said defendants, John F. Gaynor and William T. Gaynor, and Oberlin Carter, and divers other persons set up in said bill, to defraud the United States in the construction of certain work in connection with the river and harbor improvements in the Southern Judicial District of Georgia called "Savannah District" and more particularly set out in said bill, the proceeds or part of the proceeds of said conspiracy being traced to the aforesaid investments made in the said bonds in the names of said defendants, John F. Gaynor and William T. Gaynor and being held for said defendants, John F. Gaynor, and William T. Gaynor, by the defendant, Anson M. Bangs, and by him presented through the defendant Henry Clews & Company to the said Secretary of the Treasury for payment; and that the court shall provide in said decree that the said bonds, together with the coupons and increment thereof, shall be delivered over to complainant, the United States of America, or that the proceeds thereof shall be paid to the said complainant. On motion of the complainant, it is, this 17th day of October, A. D. 1903, ordered that the defendants, John F. Gaynor, William T. Gaynor, and Anson M. Bangs, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided, a copy of this order be published once a week for three successive weeks in

The Washington Law Reporter and The Washington Post before said day. ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by R. P. Belew, Asst. Clerk. 42-3t

[Filed October 12, 1903. J. R. Young, Clerk.]

Tucker &amp; Kenyon, Solicitors

In the Supreme Court of the District of Columbia.  
Nettie F. Tebbs, Complainant, v. James H. C. Wilson,  
Defendant. No. 28,285. Equity Doc. 58.

The object of this suit is partition of part of a tract of land situate in the county of Washington, District of Columbia, called "Weaver's Prospect," more particularly described in the bill of complaint filed in the aforesaid suit. On motion of the complainant, it is, this 12th day of October, 1903, ordered that the defendant, James H. C. Wilson, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in

The Washington Law Reporter and The Washington Herald before said day. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 42-3t

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street N. W.

## Legal Notices.

W. Gwynn Gardiner, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Adam Stenhouse, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscriber, on or before the 15th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of October, 1906. W. GWYNN GARDINER, Fendall Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,950. Administration. [Seal.] 42-3t

W. H. Sholes, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Anna Hazelton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of October, 1906. ANNA S. HAZELTON, 1215 9th St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,947. Administration. [Seal.] 42-3t

Wm. A. McKenney, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Fanny Bryan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 14th day of September, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of October, 1906. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,804. Administration. [Seal.] 42-3t

Perri W. Firshy, Attorney  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.  
In re Estate of Mary L. Reddick, Deceased.  
Administration. No. 12,855.

DECREE NISI.

(Confirming Sale of Real Estate.)

Upon consideration of the report of Philip Stewart, executor, in the above entitled cause, filed herein on the 11th day of October, A. D. 1906, that he had sold the following described land and premises situated in the city of Washington, District of Columbia, distinguished as sub lot 23, in square 1095, in James F. Wollard's subdivision, as the said subdivision appears of record in the plat or plans of Washington in the surveyor's office of the District of Columbia, together with the improvements thereon, consisting of a two story frame dwelling, known as premises No. 1708 East Capitol St. Northeast, in the District of Columbia, said land and premises having been sold on the 8th day of October, A. D. 1906, to Eugene S. Gaskins for \$385, upon the terms of one-third cash, a deposit of \$100 made at the time of sale and the balance payable in equal instalments in one and two years from the day of sale, and to be represented by promissory notes of the purchaser bearing interest at the rate of six per cent per annum, payable semi-annually, and secured by a deed of trust on the property sold, or all cash, at the option of the purchaser, with the conveyancing, examination of title, and notarial fees at the cost of the purchaser, it is, by the court, this 16th day of October, A. D. 1906, adjudged, ordered, and decreed that the said sale be, and the same is, hereby ratified and confirmed, unless cause to the contrary be shown on or before the 16th day of November, A. D. 1906. Provided a copy of this decree be published in The Washington Law Reporter and The Washington Bee once a week for three successive weeks before the last said date. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 42-3t

**Legal Notices.**

**T. Percy Myers, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of John A. Barber, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 5th day of November, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 12th day of October, 1906. J. WILLIAM HENRY, by T. Percy Myers, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,355. Administration. [Seal.] 42-8t

In the Supreme Court of the District of Columbia.  
 Thomas O'Neill, trading as O'Neill & Company, Plaintiff, v. Helen B. Ferrell, otherwise known as Helen B. Gilbertson, Defendant. At Law, No. 48,818.

The object of this suit is to recover the sum of \$481.52, with interest, according to the particulars of demand attached to the declaration herein, due the plaintiff from the defendant, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 18th day of October, 1906, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter before [Seal] said day. By the court: WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by Alf. G. Buhrman, Asst. Clerk. 42-8t

**Barnard & Johnson, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Erlson Norris, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 5th day of November, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 12th day of October, 1906. MARY E. NORRIS, Executrix, by Barnard & Johnson, Attorneys. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,207. Administration. [Seal.] 42-8t

[Filed July 20, 1906. J. R. Young, Clerk.]

**W. E. Poulton, Jr., Solicitor**

In the Supreme Court of the District of Columbia.  
 Coiter T. Bride v. The Unknown Heirs, Devisees, and Alienees of James Neale, "of Bennet," Deceased. Equity No. 28,148. Doc. No. 58.

On motion of complainant, it is, this 20th day of July, A. D. 1906, ordered that the defendants, the unknown heirs, devisees, and alienees of James Neale, "of Bennet," deceased, cause their appearance to be entered herein, on or before the first rule day, occurring three (3) months after the day of the first publication of this order; otherwise this cause will be proceeded with as in case of default. The object of this suit is to declare the title of complainant to lot numbered two (2) in square numbered five hundred and ninety-nine (599), in the city of Washington, in the District of Columbia, to be good in fee simple by adverse possession.

[Seal] By the court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. sept 21, 28; oct 19, 26; nov 16, 28.

Justice blanks of every description for sale at this office.

**Legal Notices.**

**Milton D. Campbell, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Charles A. Chapman, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the 18th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of October, 1906. ANNIE WILLIAMS, care of Milton D. Campbell, 1381 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,568. Administration. [Seal.] 42-8t

**S. T. Thomas, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of David E. Sharretts, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of October, 1906. S. T. THOMAS, 452 D st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,967. Administration. [Seal.] 42-8t

**Bates Warren and Wm. L. Browning, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the State of Pennsylvania, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Anna Wackwitz Kummell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of October, 1906. TILLIE BRESFORD, 7238 Mt. Vernon st. E. E., Pittsburgh, Pa. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,972. Administration. [Seal.] 42-8t

**J. A. Maedel, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Charles Schroth, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 18th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of October, 1906. FRANK SCHROTH, 1435 Md. ave. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,932. Administration. [Seal.] 42-8t

**Victor H. Wallace, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Cyrus Snyder, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of October, 1906. JULIA N. SNYDER, 1423 6th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,850. Administration. [Seal.] 42-8t

**Legal Notices.**

**John B. Lerner, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Robert M. Lerner, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of October, 1906. JOHN B. LERNER, 1835 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,944. Administration. [Seal.] 42-3t

**Erskine Gordon, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John A. Bryan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of October, 1906. ERSKINE GORDON, 330 John Marshall Place. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,861. Administration. [Seal.] 42-3t

**Trustees' Sale of Valuable Improved Real Estate.**

By virtue of a power of sale contained in a deed of trust given by George W. Adams to Marion Duckett and Elbert Dent, trustees, dated February 2, 1904, and recorded February 3, 1904, in lib No. 2794, at folio 261 et seq, one of the land records for the District of Columbia, default having been made in the payment of the indebtedness therein set forth, the undersigned, surviving trustee, will sell at public auction, on the premises, on Monday, October 29, 1906, at 3 o'clock P. M., all the land described in said deed of trust, being a part of original lot No. 26, in square numbered 552 of Washington City, D. C., beginning at a point on the south line of Q street, N. 20 feet E. of the northwest corner of said lot; thence east along said line of Q street 20 feet; thence S. 105 feet; thence W. 20 feet, and thence N. 105 feet to the beginning, improved by a small frame dwelling, No. 120 Q street N. W. Terms of sale: Cash; \$100 deposit required at the time of sale. Conveyancing at the cost of the purchaser. MARION DUCKETT, Surviving Trustee, 635 F st. N. W., Washington, D. C. 42-3t

**SECOND INSERTION.**

**Dani. W. O'Donoghue, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Lawrence O'Neil, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 9th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of October, 1906. MARY O'NEIL, 721 22d st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,952. Administration. [Seal.] 41-3t

**Nelson Wilson, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Blanche E. Walker, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of October, 1906. GEORGE E. WALKER, 1929 Calvert st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,957. Administration. [Seal.] 41-3t

**Legal Notices.**

**Henry E. Davis, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**In the Matter of the Estate of James K. Murphy,**  
**Deceased.**

Admn. No. 18,809.

Application having been made herein for the probate of the last will and testament of James K. Murphy, deceased, and for letters testamentary on said estate, by Sarah K. Foss, it is, this 10th day of October, A. D. 1906, ordered, that John M. Murphy and Francis P. Murphy, and all others concerned, appear in said court on the 15th day of November, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] ASHLEY M. GOULD, Associate Justice. A true copy. Attest: James Tanner, Register of Wills. 41-3t

**Eugene A. Jones, G. C. Shinn, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Jessie Hingham Frazier, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of October, 1906. EUGENE A. JONES, Commercial Bank Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,892. Administration. [Seal.] 41-3t

**Wilton J. Lambert, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Leander Van Riewick, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 9th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 9th day of October, 1906. MARY VAN RIEWICK, 106 2d st. N. W.; WILTON J. LAMBERT, 410 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,874. Administration. [Seal.] 41-3t

**Merillat & Richardson, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Charles H. Merrillat et al. v. Lyman D. Landon et al.**  
**Equity, No. 28,396.**

The object of this suit is to subject the pretended interest of Lyman D. Landon and Susie V. Kimberly in a certain tract of land known as Dry Meadows, in the District of Columbia, to the lien of a decree or judgment against Thomas G. Hensley and Melville D. Hensley. On motion of the complainant, it is, this 11th day of October, A. D. 1906, ordered that the defendant, Leonard H. Dyer, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and the Evening Star before said day. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. 41-3t

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**Legal Notices.**

**John L. Johnson, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Eveline Hawkins**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 9th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of October, 1906. **JOHN LEWIS JOHNSON**, 500 5th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,965. Administration. [Seal.] 41-3t

**Newton & Gillett, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Arohie Upperman**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of October, 1906. **ALEXANDER KENT**, 28 T st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,928. Administration. [Seal.] 41-3t

**Richard P. Evans, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Pinkney W. Smith**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of October, 1906. **ROBERT L. EWING**, 106 5th st. N.E. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,899. Administration. [Seal.] 41-3t

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Delos Lloyd**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of October, 1906. **SARAH A. LLOYD**, Executrix. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,900. Admn. [Seal.] 41-3t

**THIRD INSERTION.**

**F. G. Coldren, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Michael O'Hearn**, sometimes known as **William Walsh**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of September, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of September, 1906. **FREDERICK A. FENNING**, Century Building. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,885. Administration. [Seal.] 40-3t

**Legal Notices.**

**Wm. A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Halbert E. Paine**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Friday, the 26th day of October, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 3d day of October, 1906. **AMERICAN SECURITY AND TRUST COMPANY**, James F. Hood, Secretary, by **Wm. A. McKenney**, Attorney. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,118. Administration. [Seal.] 40-3t

[Filed October 4, 1906. J. R. Young, Clerk.]

**Gittings & Chamberlain, Solicitors**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**Sarah R. Thorn, Complainant, v. Joseph A. Thorn,**  
**Charles E. Thorn et al., Defendants.**  
**Equity No. 28,076.**

The object of this suit is to obtain a construction of the will of the late **Columbus W. Thorn**, deceased. On motion of the complainant, it is, this 4th day of October, A. D. 1906, ordered that the defendants, **Joseph A. Thorn** and **Charles E. Thorn**, cause their appearances to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in the case of default. Provided a copy of this order be published at least once a [Seal] week for three successive weeks in The Washington Law Reporter and The Washington Post. **HARRY M. CLABAUGH**, Chief Justice. A true copy. Test: **J. R. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. 40-3t

**Blair & Thom, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**In the Matter of the Estate of Sarah E. Ferguson, Deceased.** Probate No. 9450.

Application having been made herein for the probate of the last will and testament of **Sarah E. Ferguson**, deceased, as a will of real estate, by **Lillian C. Whitely**, it is ordered, this 4th day of October, 1906, that **Sanford H. Waugh**, **George H. Waugh**, **Ella E. Taylor**, **Julia E. Race**, **Ralph Seabury Waugh**, **Florabelle Waugh**, **Mary A. Shaw**, and all others concerned, appear in said court on the 13th day of November, A. D. 1906, at 10 o'clock A. M., and show cause why such application should not be granted. Provided notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD**, Justice. A true copy. Attest: **James Tanner**, Register of Wills. 40-3t

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Gustavo L. Roxer, Jr.**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 22d day of October, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 3d day of October, 1906. **F. WALTER BRANDENBURG**. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,183. Administration. [Seal.] 40-3t

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W.



**Legal Notices.****Wm. A. McKenney, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Eliza L. B. Paine, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Friday, the 26th day of October, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 8d day of October, 1906. AMERICAN SECURITY AND TRUST COMPANY, James F. Hood, Secretary, by Wm. A. McKenney, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,114. Administration. [Seal.] 40-3t

**T. Percy Myers, Solicitor**

In the Supreme Court of the District of Columbia.  
**William W. Miller, Complainant, v. The Unknown Heirs, Allenees, and Devisees of Charles Carter, Defendants.** In Equity, No. 28,821.

The object of this suit is to quiet title by adverse possession in the complainant to the following described property, situate in the District of Columbia, to wit: Part of original lot 1 in square 252, contained within the following metes and bounds, viz: Beginning at the southeast corner of said lot and square and running thence west on G street 59.98 feet; thence north 88.43 feet to the center line of a wall; thence easterly along said center line of wall 29.94 feet; thence southerly 0.72 of a foot, to the center line of another wall; thence easterly along said center line of said last-mentioned wall 30 feet to Thirteenth street, and thence south 87.78 feet to the place of beginning. On motion of the complainant, it is, this 8d day of October, A. D. 1906, upon good cause shown, ordered that the defendants, the unknown heirs, allenees, and devisees of Charles Carter, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of one month from this date; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star

[Seal] before said day. **ASHLEY M. GOULD,** Justice. True copy. Test: J. R. Young, Clerk, by R. P. Belew, Asst. Clerk. 40-3t

**P. H. Marshall, Attorney**  
**Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Ellen M. Ware, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 1st day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 1st day of October, 1906. **RICHARD WARE, 604 14th St. N. W., ALBION K. PARRIS, 604 14th St. N. W.** Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,939. Administration. [Seal.] 40-3t

[Filed September 28, 1906. J. R. Young, Clerk.]

**Carlisle & Johnson, Solicitors**

In the Supreme Court of the District of Columbia.  
**Ira V. Garrity et al. v. Lewis A. Means, Trustee, et al.** Equity No. 21,684. Doc. 49.

**Hugh T. Taggart, Oscar Luckett, and William M. Olney,** trustees herein, having reported the sale of part of lot No. 197 in square 1291 (formerly square 121 of Threlkeld's addition to Georgetown), in the District of Columbia, and being the north 28.75 feet front by the full depth of said lot, to George W. Ray, for the sum of \$2,420 cash, it is, by the court, this 28th day of September, 1906, ordered that the said sale be finally ratified and confirmed unless cause to the contrary be shown on or before the 30th day of October, 1906. Provided that a copy of this order be published in The Washington Times and The Washington Law Reporter once a week for three successive weeks before said

[Seal] last named day. **HARRY M. CLABAUGH,** Chief Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 40-3t

**Legal Notices.**

[Filed October 1, 1906. J. R. Young, Clerk.]

**S. T. Thomas, Solicitor**

In the Supreme Court of the District of Columbia,  
**Mary E. Bacon et al. v. Annie M. Hunt et al.** In Equity, No. 28,870.

The trustees herein having reported that they have received a private written offer of \$1,100 cash for the purchase of the property mentioned in these proceedings, viz: Sublots lettered D & F in square 701, it is ordered this 1st day of October, A. D. 1906, that said trustees be and they are hereby authorized to accept said offer, and upon compliance with the terms of sale, the said sale shall stand confirmed, unless cause to the contrary be shown on or before the 31st day of October, 1906. Provided a copy of this order be published in The Washington Law Reporter once in each of three successive weeks before the last mentioned date. By the

[Seal] Court: **HARRY M. CLABAUGH,** Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 40-3t

**Ralston & Siddons, Solicitors**

In the Supreme Court of the District of Columbia.  
**Joseph Ralston Morris v. The Unknown Heirs, Devisees, and Allenees of Appolona Whitehair, and The Unknown Heirs, Devisees, and Allenees of Justinian Mayberry.** Equity No. 28,496. Doc. 58.

The object of this suit is to obtain a decree of this court vesting title by adverse possession in the premises known as sublot nineteen (19) in square one hundred and three (103), Washington, D. C., as per plat recorded in liber H. D. C., folio 145 of the District of Columbia land records. On motion of the complainant, by Ralston & Siddons, his solicitors, it is, this 18th day of September, 1906, ordered that the defendants, the unknown heirs, devisees, and allenees of Appolona Whitehair, and the unknown heirs, devisees, and allenees of Justinian Mayberry, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three months in The Washington Law Reporter and The Evening Star before

[Seal] said date. **HARRY M. CLABAUGH,** Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk.

sept 21, 28; oct 19, 26; nov 23, 30

**FOURTH INSERTION.****E. A. Newman, Solicitor**

In the Supreme Court of the District of Columbia.  
**Claudia M. Moran and Another v. The Unknown Heirs or Devisees of John B. Bernaben, Deceased.** No. 28,501. Equity Doc. 59.

The object of this suit is to obtain a decree of the court vesting title by adverse possession in the complainants according to their respective rights in and to all that certain piece or parcel of ground and premises situate in the city of Washington and District of Columbia, and known and distinguished as and being part of original lot 6 in square 428. Beginning for said part at the northwest corner of said lot and running thence east 78.67 feet to the line of the property conveyed to Young by deed recorded in liber No. 1721, folio 459, one of the land records of the District of Columbia; thence south with the west line of said property 28.58 feet; thence west 22.47 feet to the line of the property conveyed to the heirs of Martha J. Greer by deed recorded in liber No. 1751, folio 194, of the said land records; thence north 0.95 of a foot, and thence southwesterly 56.20 feet, more or less, to the line of 8th street west, and thence north along the line of said 8th street 24.58 feet to the said place of beginning. On motion of the complainants, it is, this 7th day of September, 1906, ordered that the defendants, the unknown heirs or devisees of John B. Bernaben, deceased, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three months in The Washington Law Reporter and The Washington Post and The Evening Star before said day. **ASHLEY M. GOULD,** Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer Asst. Clerk. sept. 14, 21; oct. 12, 19; nov. 9, 16

Justice blanks of every description for sale at this office.



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WASHINGTON, D. C. - - - OCTOBER 26, 1906

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### Dangerous Structures—Party Walls—Building Regulations.

The decision of the Court of Appeals of this District in the case of District of Columbia v. Mattingly, reported in this District, involves an interesting question in regard to party walls, and also the construction of the act of Congress of March 1, 1899, relating to the removal of dangerous or unsafe structures. Appellee having failed to comply with a demand for the removal of a party wall between his premises and those of the adjoining proprietor, a board of survey was chosen under the provisions of said act to determine the question of whether or not the wall in question was a dangerous structure, within the meaning of the statute. On the coming in of the report of said board, and the appellee still refusing to remove the wall, and denying the right of the District Commissioners to remove it or to charge against him any portion of the cost, the District authorities proceeded to remove and rebuild the wall and assessed a considerable portion of the expense against his property. The court below, on certiorari, quashed the assessment, and the Court of Appeals affirms this judgment, holding that the findings of the board of survey did not show the wall in question to be a dangerous structure.

The court also holds that the act of March 1, 1899, has no application to a case where one of two joint owners of a party wall, which was sufficient for the purposes for which it was erected, finds it insufficient for the purposes of a new building and desires its removal. In such a case, section 74 of the Building Regulations applies and the costs of removal and rebuilding the wall are to be paid by the party receiving the benefit.

The case has additional interest in the fact that the opinion is the first judicial deliverance of Mr. Justice Robb as a member of the Court of Appeals.

### A Legislative Blunder.

An interesting instance of the intent of the Legislature being thwarted by a blunder is afforded by the act of Congress of June 20, 1906, amending the act of March 2, 1905. The design of the act of 1906 was to make effective the act of 1905, which was intended to prevent the deception practiced by dishonest vendors in selling provisions, etc., for a weight or measure greater than the true weight or measure thereof. The act as finally passed, however, provides that "no person shall sell or offer for sale anywhere in the District of Columbia any provisions . . . for a weight or measure less than the true weight or measure thereof." This being the language of the law, it was necessarily held, in the case of District of Columbia v. Gant, reported in this issue, that a produce dealer who had sold six pounds of chickens upon his representation that they weighed eight pounds and had received payment for eight pounds, was yet not guilty of a violation of the act of Congress. The effect of the legislation is therefore the exact opposite of that intended.

### The Late Chief Justice Richard H. Alvey.

The call of the calendar in the Court of Appeals of this District was concluded on Wednesday, October 24, 1906, and the court took a recess until Thursday, November 1, 1906, when it will reassemble for the purpose of participating in a meeting of the bar to pay tribute to the memory of the late Chief Justice Richard H. Alvey. The arrangements for the meeting are in charge of a committee of the bar association, and due announcement of the hour will be made. Not alone because he was a great judge, but as well by reason of his exalted character as a man, it is eminently fitting that this tribute of respect to his memory should be paid. We shall hope to give in our columns a full report of the meeting.

## Court of Appeals of the District of Columbia.

## DISTRICT OF COLUMBIA, APPELLANT,

v.

## WILLIAM F. MATTINGLY, TRUSTEE.

DANGEROUS OR UNSAFE STRUCTURES, REMOVAL OF;  
PARTY WALLS; BUILDING REGULATIONS.

1. The act of Congress of March 1, 1899 (30 Stat., 923), relating to the removal of dangerous or unsafe buildings or parts thereof, etc., passed in the exercise of police power, is in derogation of rights and enjoyment of property, and must be strictly construed.
2. The findings of a board of survey appointed under the provisions of said act to determine whether a certain party wall, the removal of which had been ordered by the District authorities, was a dangerous structure, reviewed, and held not to show that the wall in question was a dangerous structure within the meaning of the statute; that the action of the District authorities in removing and rebuilding the wall and assessing a part of the cost thereof against the property of the appellee was unauthorized, and that the court below was right in quashing the assessment.
3. The act of March 1, 1899, has no application to a case where one of two joint owners of a party wall, sufficient for the purposes for which it was erected, finds the wall insufficient for the purposes of a new building and desires its removal. In such a case the provisions of section 74 of the Building Regulations apply, and the costs of removal and rebuilding the wall are to be borne by the party receiving the benefit from the change.

No. 1720. Decided October 19, 1906.

APPEAL by respondent from a judgment of the Supreme Court of the District of Columbia, at Law, No. 47,615, quashing, upon certiorari, a tax assessment. Affirmed.

*Mr. E. H. Thomas and Mr. F. H. Stephens* for the appellant.

*Mr. D. W. Baker and Mr. F. J. Hogan* for the appellee.

Mr. Justice ROBB delivered the opinion of the Court:

This is an appeal from the Supreme Court of the District of Columbia, and involves the construction of the act of March 1, 1899 (30 St. at L., 923).

The question was before the court below on certiorari. The appellee, as petitioner, filed a petition on the law side of the Supreme Court of the District of Columbia, for a writ of certiorari to quash a tax of \$1,292.69 assessed under authority of the above act of March 1, 1899. The writ of certiorari was issued, and the appellee's motion to quash the return of the Commissioners of the District of Columbia to said writ was granted, and judgment entered accordingly.

The appellee, as trustee, is the owner of a fee simple interest in the lot and building thereon known as No. 1721 Pennsylvania avenue northwest, adjoining the property known as Nos. 1723-1725 Pennsylvania avenue northwest, the property of a Mr. Farren. Between these properties was a party wall. It appears that Mr. Farren desired to remove the old buildings from Nos. 1723-1725, and made a contract with W. H. Germann, a local builder, to do the work. Under date of June 30, 1904, in a communication addressed to the Commissioners of the District, Mr. Germann said:

"Upon very careful examination of the wall of the four-story building adjoining on the east

(which serves both properties as party wall), I found a very dangerous condition of circumstances. I thereupon called the building inspector into consultation regarding same, and he by communication on file in his office dated June 4, 1904, notified me to stop operations until said east wall shall have been reconstructed. He thereupon notified the owners of said east wall of his condemnation of same, and asked for the appointment of a commission of prominent builders to report on the condition of said wall, which report I think is now in your hands."

The communication, or notice of the building inspector referred to in Mr. Germann's letter is dated June 8, 1904, and reads as follows:

"Mr. L. M. SAUNDERS, Agent, and Mr. W. B. FARREN, Owner. Joint Interest.

"GENTLEMEN: Examination has been made by the inspector of buildings and assistant inspector of the west party wall of 1721 Pa. Ave. N. W., and we find that said wall is about 9 inches thick in its entire height or more than 60 feet, and that said wall is endangered by two chimneys projecting 13 inches from wall and 50 feet high, partially supported on two 4" x 4" posts. And further that the wall and chimneys are bulged at several places as much as 3", and at another place concaved 4" and out of plumb 3" in a height of 26 feet above roof of adjoining building.

"The wall is not safe in its present condition or suitable for the uses of a party wall and is therefore condemned and must be removed within ten (10) days and rebuilt within sixty (60) days.

"Pending the rebuilding of said wall in accordance with the building regulations and before the removal of wall the building must be shored up and secured against damage or collapse by storm or other causes.

"This notice is served under provisions of section 16 (act of Congress), of the Building Regulations, D. C."

This notice, it will be observed, was addressed to both the agent of the appellee and to Farren, the owner of the adjoining property, but the record is silent as to whether or not service was made on Farren. No attention was given this notice by appellee, and on June 23, 1904, notice was sent his agent that under the provisions of section 2 of the said act of March 1, 1899, the Commissioners had "appointed a member of a board of survey to make a careful survey and report of the premises," and notice was given appellee to appoint a member of said board of survey within three days from that date. The appellee on the same day, through his agent, in a communication to the Commissioners, said: "I am willing that Mr. F. W. Pilling, 1536 15th st., shall be such representative, subject to all objections as to the legal competency of such a survey."

Under the provisions of the statute, these representatives of the respective parties selected Charles Denham as the third member of the board, and the board, under date of June 29, 1904, made the following report:

"We have this day made an examination of the west party wall of 1721 Pennsylvania avenue N. W., and find that said wall is but nine inches thick in its entire height of 60 feet; that said wall is now greatly endangered by the re-

removal of the bases of the two chimneys on the adjoining owner's side (which should be replaced at once), for the height of the first story. The only supports for said chimneys being two wooden posts, 4" x 4", under each one.

"The wall and chimneys are bulged and concaved in several places. Anchors have been inserted to hold this wall in place. So far as we could see, there is no recent settlement or moving of the wall to indicate that it is dangerous.

"We are of the opinion that if the bases of the chimneys on adjacent side are replaced and properly secured, the adjoining property on the west can be demolished. We believe the present wall is sufficient for its present uses, but not sufficient for the use of adjoining owner to impose the weight of a new building upon."

This report of the board of survey was duly transmitted to the appellee's agent, who on July 8, 1904, in a communication addressed to the Commissioners, challenged the right of the Commissioners to remove the wall or to assess any costs against the property of his principal in that connection. Thereupon the District proceeded to remove and rebuild the wall, and assessed on account thereof \$423.08 against Faren's property, and \$1,292.69 against the property of the appellee. The legality of the latter assessment is here involved.

The first three sections of the act of March 1, 1899, contain all of said act that is material to the issue in this case, and read as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That if in the District of Columbia any building or part of a building, staging, or other structure, or anything attached to or connected with any building or other structure, shall, from any cause, be reported unsafe, the inspector of buildings shall examine such structure, and if, in his opinion, the same be unsafe, he shall immediately notify the owner, agent, or other person having an interest in said structure to cause the same to be made safe and secure, or that the same be removed, as may be necessary. The person or persons so notified shall be allowed until twelve o'clock noon of the day following the service of such notice in which to commence the securing or removal of the same; and he or they shall employ sufficient labor to remove or secure the said building as expeditiously as can be done; *Provided, however,* That in a case where the public safety requires immediate action the inspector of buildings may enter upon the premises, with such workmen and assistants as may be necessary, and cause the said unsafe structure to be shored up, taken down, or otherwise secured without delay, and a proper fence or boarding to be put up for the protection of passers-by.

"Sec. 2. That when the public safety does not, in the judgment of the inspector of buildings, demand immediate action, if the owner, agent, or other party interested in said unsafe structure, having been notified, shall refuse or neglect to comply with the requirements of said notice within the time specified, then a careful survey of the premises shall be made by three disinterested persons, one to be appointed by the Commissioners of the District of Columbia, one by the owner or other person in-

terested, and the third to be chosen by these two, and the report of said survey shall be reduced to writing, and a copy served upon the owner or other interested party; and if said owner or other interested party refuse or neglect to appoint a member of said board of survey within the time specified in said notice, then the survey shall be made by the inspector of buildings and the person chosen by the Commissioners, and in case of disagreement they shall choose a third person, and the determination of a majority of the three so chosen shall be final.

"Sec. 3. That whenever the report of any such survey shall declare the structure to be unsafe, and the owner or other interested person shall neglect or refuse to cause such structure to be taken down or otherwise to be made safe, the inspector of buildings shall proceed to make such structure safe or remove the same, and the said inspector shall report the cost and expense of said work to the Commissioners of said District, who shall assess the amount thereof upon the lot of ground whereon such structure stands or stood, and unless the assessment is paid within ninety days from the service of notice thereof on the agent or owner of such property, the same shall bear interest at the rate of ten per centum per annum from the date of such assessment until paid, and shall be collected as general taxes are collected in said District; but said assessment shall be without prejudice to the right which the owner may have to recover from any lessee or other person liable for repairs."

The above act, passed in the exercise of police power, is in derogation of the rights and enjoyment of property, and must be strictly construed.

The legality of this assessment necessarily turns upon the interpretation to be given to the report of the board of survey, to which reference has been made. This notice of the building inspector preceding the report is to be considered as being but the preliminary step pointed out by the statute to call the board into being. The board having been legally constituted, its report must form the basis of our decision. In interpreting this report, however, it is proper that we should consider the surrounding circumstances. What were those circumstances? First, the owner of Nos. 1723-1725, the adjoining property, had decided to replace the old buildings on his premises with a new building. It appears from the letter of his builder, previously referred to, something had been done towards the demolition of the old buildings before proceedings for the condemnation of the party wall were undertaken. The conclusion having been reached by this builder that it would be necessary to reconstruct this party wall, the matter was brought to the attention of the building inspector of the District, who thereupon, in the communication previously set out, notified the appellee that the wall had been condemned.

It appears from the above notice of the building inspector that there were two chimneys in this wall 50 feet high, and that they projected 13 inches from the wall.

The first finding of the board of survey is: "that said wall is but 9 inches thick in its en-

tire height of 60 feet." Such a wall might or might not be dangerous within the meaning of section 1 of the above act. In the absence of more definite information we certainly would not be warranted in assuming that, because the wall was 60 feet high and but 9 inches thick, it was a dangerous wall. Especially is this true in a case like this, where it must clearly and affirmatively appear that the wall complained of was dangerous within the meaning of the statute.

The second finding is: "that said wall is now greatly endangered by the removal of the bases of the two chimneys on the adjoining owner's side (which should be replaced at once) for the height of the first story. The only supports for said chimneys being two wooden posts 4" x 4" under each one."

The building inspector, it will be seen, in his notice states that the two chimneys projected 13 inches from the wall. It is evident from the report of the board of survey that the projection was on the property of Nos. 1723-1725. This fact, taken in connection with the second finding of the board of survey, irresistibly leads to the conclusion that the owner of Nos. 1723-1725 was alone responsible for thus endangering the wall, for the bases of the chimneys were removed on that side. It is apparent that two chimneys built into a wall from its base up would greatly strengthen it, and it is equally apparent that the removal of 10 or 12 feet of the bases of the chimneys, leaving them practically suspended from the wall, would, as the board of survey found, greatly weaken and endanger the wall.

The next finding is that: "The wall and chimneys are bulged and concaved in several places. Anchors have been inserted to hold this wall in place. So far as we could see, there is no recent settlement or moving of the wall to indicate that it is dangerous."

There is nothing in this finding which would warrant us in assuming that the irregularity of the wall was not caused by the removal of the bases of the two chimneys, or that the wall was then dangerous.

The next finding is that: "We are of the opinion that if the bases of the chimneys on the adjacent side are replaced and properly secured, the adjoining property on the west can be demolished."

This finding, in effect, charged the owner of Nos. 1723-1725 with repairing the damage he had caused by removing the bases of the two chimneys, and in no way supports the contention that the wall, irrespective of the removal of the bases of the chimneys, was dangerous or that it would have been dangerous if the chimneys had been repaired.

In the next and last finding the board says: "We believe the present wall is sufficient for the present uses, but not sufficient for the use of the adjoining owner to impose the weight of a new building upon."

This finding, in our opinion, is consistent with and is sustained by the other findings in the report, and leads us to the conclusion that, had the owner of Nos. 1723-1725 made good the damage occasioned by him, the wall would have been safe even had the buildings been removed from Nos. 1723-1725.

In the case of *Ferguson v. Fallons & Vandyke*, 2 Phila. Rep., 168, the facts were almost identical with the facts in this case. In that case the court said: "The wall, per se, is not alleged to be dangerous and insufficient, but the adjoining owner, desiring to erect a large building and claiming a right to use the wall as a party wall, found the same insufficient for his purposes, and in order to have the wall reconstructed of sufficient strength, caused the present proceedings to be taken."

"We think the proper course has not been adopted. The fourth section of the act of 1856 was not designed for the purpose to which it has been applied. That section was obviously intended to secure the safety of the community, by causing dangerous walls to be removed, not to enable parties, who desired to change or to make use of their neighbors' walls, to compel them to pull them down or alter them to suit their purposes. It would be contrary to all right to compel the owner of a perfectly good wall, if he presumes to appeal to the board of surveys for protection, to pay the inspector's fees and ten dollars for the use of the city, because his neighbor chooses to build a larger house than his, requiring higher and thicker walls. The act in question means no such thing; its object is safety, and it makes the remedy a speedy one, because the owner of a dangerous or insufficient wall is sustaining a nuisance, and it inflicts a penalty for delay in abating it."

The District apparently proceeded upon the theory that the act of March 1, 1899, is applicable in a case where one of two joint owners of a party wall finds the wall insufficient for the purposes of a new building and desires its removal, for in the fifth paragraph of its return to the petition below of appellee, we find the following:

"Defendant further says that the owner of premises No. 1723 Pennsylvania avenue, north-west, in this city, which joins the premises assessed on the west, desired to erect a new building upon his property, but found that the party wall between him and No. 1721 was unsafe for the purpose; that the defendant notified Lorin M. Saunders, who was the agent for the premises No. 1721, aforesaid, and who was the son-in-law of the said trustee Green, to remove and rebuild the said wall, but the said Saunders refused either to remove or rebuild the same; that thereupon a board of survey was duly and legally constituted and, after inspection of the said wall, reported that it was insufficient for the use of the adjoining owner to impose the weight of a new building upon."

We do not think the act of March 1, 1899, applicable to such a case as this where the wall, so far as the evidence discloses, would have been sufficient for the purposes for which it was erected, but for the act of the adjoining owner. The District, however, might have proceeded under section 74 of the Building Regulations, which provides:

"The inspector of buildings shall, upon the application of any building owner or his authorized agent, examine any party wall, and if deemed by said inspector to be defective, out of repair, or otherwise unfit for the purpose of new buildings about to be erected, such party walls shall be made good or taken down by the

building owner, as the decision may be. The cost and expense of such repair or removal, together with the expense of the new wall or walls erected in lieu thereof, shall be borne and paid exclusively by him . . . and the building owner shall also make good all damages occasioned thereby to the adjoining owner or his premises."

This section was designed to meet conditions different from those comprehended in the act of March 1, 1898. That act provides a summary remedy in cases where the public safety is in danger. This building regulation is designed to meet just such conditions as apparently existed in this case, where a party wall is insufficient for the support of new buildings. The costs, however, in a proceeding based upon this building regulation are to be paid by the party receiving the benefit from the change.

In the case of *Hoffstot v. Voight*, 146 Pa. State, 336, which is a case involving the regulation of party walls, the court said: "If the old wall is sufficient for the old use, and the new one is built solely to accommodate a new use, the adjoining owner, who merely continues the old use, can not be called upon to contribute for his neighbor's improvement."

Our conclusion being that the wall was not "an unsafe structure" within the meaning of the act of March 1, 1899, the judgment must be affirmed. Affirmed with costs.

Professor Brander Matthews of Columbia University contributes an interesting essay "Concerning the Soliloquy" to the November number of Putnam's Monthly and The Critic. As chairman of the simplified spelling board, Professor Matthews has asked to have this essay printed in conformity with the rules of that body. He believes the public will be surprised to see how few are the points at which the so-called reformed spelling departs from that of the orthographical conservatives.

**Master and Servant—Loan of Servant to Third Person.**—Where an employer lends his employee to a third person for a particular employment, the employee for anything done in the particular employment is the employee of the third person. *Wiest v. Coal Creek R. Co.* (Wash.), 84 Pac. Rep., 725.

**Evidence—Burden of Proof.**—A party on whom rests the burden of proof must, in order to entitle himself to a finding in his favor, give evidence not only of greater convincing power, but such as to convince the jury of the truth of his contention. *Anderson v. Chicago Brass Co.*, (Wis.), 106 N. W. Rep., 1077.

**Master and Servant—Assumption of Risk.**—The defense of assumption of risk in an action for injuries to a servant rests on contract arising from the contract of employment that he will assume the ordinary risks of the service. *Choc-taw, O. & G. R. Co. v. Jones* (Ark.), 92 S. W. Rep., 244.

## Court of Appeals of the District of Columbia.

### DISTRICT OF COLUMBIA, PLAINTIFF IN ERROR,

v.

HORACE L. GANT.

#### FALSE WEIGHTS AND MEASURES.

In a prosecution in the Police Court it appeared that defendant, who was charged with selling certain chickens for less weight than the true weight thereof, had sold certain chickens which he said weighed 8 pounds and was paid for that quantity, when the true weight was 6 pounds. *Held*, that the Police Court rightly adjudged that the facts proved did not constitute a violation of section 10 of the act of March 2, 1906, as amended, providing that "no person shall sell or offer for sale in the District of Columbia any provisions . . . for a weight or measure less than the true weight or measure thereof," etc.

No. 1713. Decided October 23, 1906.

IN ERROR to the Police Court of the District of Columbia. Affirmed.

*Mr. E. H. Thomas and Mr. F. H. Stephens* for the plaintiff in error.

There was no appearance for the defendant in error.

Mr. Justice McCOMAS delivered the opinion of the Court:

In the Police Court of this District the information in this case charged that Gant sold certain chickens for less weight than the true weight thereof; that he sold 6 pounds of chickens for 8 pounds, contrary to the act of Congress. The facts are undisputed. Gant sold to the witness Kepnick chickens which he said weighed 8 pounds, and she paid him for 8 pounds. The sealer of weights and measures, to whom Kepnick carried the chickens, found their true weight to be 6 pounds. Thereupon the court below adjudged that the true weight of the chickens was 6 pounds and that they were sold at 8 pounds, which was a greater weight than the true weight thereof, and, therefore, the defendant in error had not violated the act of Congress. We must affirm this ruling.

By the act of June 20, 1906, section 10 of "An act to provide for the appointment of a sealer and assistant sealer of weights and measures in the District of Columbia, and for other purposes," approved March 2, 1906, was amended so as to read: "No person shall sell or offer for sale anywhere in the District of Columbia, any provisions or produce or commodities of any kind for a weight or measure less than the true weight or measure thereof, etc."

The facts proved did not constitute an indictable offense under the common law. In such a case the injured person had a civil remedy, because an act such as is here charged was only an inconvenience and injury to a private person arising from that private person's own negligence in not first ascertaining the true weight. If a man used false weights or measures, and sold by them, in the general course of his dealing, his offense was such a one as affects the public, and was indictable, for these were deceptions that common care and prudence are not sufficient to guard against, but a mere private imposition or deceit, such as the one

proved in this case, like the selling of an unsound horse for a sound one, was not indictable at the common law. In such cases the buyer should be more upon his guard. See *Rex v. Wheatley*, 2 Burrows, 1127.

Now Congress sought to punish such impositions or deceptions. By the tenth section of the act of March 2, 1895, 28 Statutes, 812, Congress provided that no person shall sell, or offer for sale, anywhere in this District, any fruits, vegetables, or berries, or any butter in prints, or any ice or coal, at or for a greater weight or measure than the true weight or measure thereof; and it then provided that all ice, coal, meats, poultry, and provisions sold in the markets or elsewhere in this District should be weighed or measured, by scales or in measures, duly tested and stamped. The section prohibited the sale of enumerated things for a greater weight or measure than the true weight or measure thereof, and then provided that all meats, poultry, and provisions (excepting vegetables) should be weighed or measured by prescribed weights or measures, and that poultry, when the purchaser requested, should be weighed in the manner provided. The difficulties met in enforcing this section arose from its terms. The sale of certain things for a weight or measure greater than the true weight or measure was prohibited, while meat, poultry, and certain other things sold were merely required to be weighed or measured, and it is doubtful whether the things enumerated in the second clause were subjected to the prohibition in the first clause.

We have examined the history of this amendatory act of June 20, 1906. As the bill passed the House of Representatives, it amended section 10 so as to read, "No person shall sell or offer for sale anywhere in the District of Columbia any provisions or produce or commodities of any kind for a greater weight or measure than the true weight or measure thereof," and the rest of the section cured other defects of section 10 of the act of March 2, 1895. The Senate, however, amended the House bill by striking out the word "greater" before "weight or measure" and inserting the word "less" after the words "weight or measure." In this form the law was enacted and therefore when Gant, the defendant in error, sold chickens which weighed 6 pounds for 8 pounds, he did not sell them for a weight less than the true weight.

Counsel for the District of Columbia have urged that Congress intended to impose criminal punishment for such a deceit as was proved against this defendant. This court has no power to amend the statute, and can only interpret it. It would seem Congress intended to protect purchasers by prohibiting dishonest vendors from selling provisions, produce, or commodities for a weight or measure greater than the actual or true weight or measure thereof, but the statute does not say so.

The judgment below must be affirmed, and it is so ordered.

**Insurance—Change in Interest.**—The word "interest" in an insurance policy applies only where insured owns and insures an interest less than title. *Garner v. Milwaukee Mechanics' Ins. Co.* (Kan.), 84 Pac. Rep., 717.

#### Contempt—Proceedings Against Individual Members of Labor Organizations—Production of Documents.

The decision of the Supreme Court of Pennsylvania in the case of *Paterson v. Wyoming Valley District Council* deals with an interesting and important phase of contempt proceedings. The opinion, while not to be included in the Reporter system of the West Publishing Co., is given in full in a recent issue of the Federal Reporter under the heading "Cases of Interest," and two rulings of especial importance are made. It is held first, that where the decree of a court enjoining a labor organization and its members from maintaining a boycott has been disobeyed, the officers may be compelled to produce the books and records in contempt proceedings, and that such proceedings are civil in their nature, and not criminal, within the meaning of the Federal and State constitutions. The court further holds that the individual members of an unincorporated labor organization are in much the same position as the members of a business partnership, and may be punished for a contempt committed by the organization. The opinion of the court, by Head, J., is as follows:

"On October 10, 1901, the present plaintiffs filed a bill in the court of common pleas of Luzerne County alleging they were being injured in their business by reason of a 'boycott' instituted and maintained by the present appellants and others, as a result of which workmen were prevented from working on any buildings to which any material was furnished by the plaintiffs, who conducted a planing mill and dealt generally in lumber and builders' supplies. An answer was filed, and the case went on practically to final hearing, after which, on April 7, 1902, a decree was entered continuing the injunction indefinitely. This was regarded by the parties as in effect a final decree putting an end to the controversy. As no appeal was ever taken from this decree, there is no occasion for us to consider or discuss the important principles on which the learned court below founded its judgment. They were most exhaustively summed up and ably presented in the opinions filed before and with the final decree.

"On November 17, 1904, the plaintiffs filed their petition, accompanied with affidavits, representing that, in violation of the injunctive decree previously entered, the injurious interference with their business was being continued, specifying particular instances, etc. A rule was thereupon granted to show cause why an attachment, as for contempt, should not issue; an answer was filed, testimony was taken, and on September 18, 1905, the rule was made absolute, the attachment issued, and on September 22, 1905, the court imposed the sentence from which this appeal is taken. While testimony was being taken on the rule certain officers of the Wyoming Valley District Council and subordinate locals were subpoenaed to produce their records and minute books showing what action, if any, had been taken concerning the business of the plaintiffs. Acting under advice of counsel they refused to produce these records before the commissioner who was taking the testimony, and on November 5, 1904, the court filed

an order requiring the production of the records. This is the first error assigned in the present appeal.

"The argument advanced to convict the learned court below of error in this respect is drawn from article 5 of the amendments to the Constitution of the United States, which provides that no person 'shall be compelled in any criminal case to be a witness against himself;' and section 9 of article 1 of the constitution of Pennsylvania, which provides that 'in all criminal prosecutions the accused can not be compelled to give evidence against himself.' These provisions, having been imbedded in the fundamental law to safeguard the individual rights and liberties of the citizen, must be construed with reasonable liberality so as to accomplish the object intended. But it is equally clear that their construction should not be so strained as to compel their application to cases not clearly and fairly within the letter or intendment of the language quoted. Now it must be apparent at a glance that the immunity from testifying is conferred, not in all cases, nor even in all cases where it may be in some way to the detriment of the witness to be compelled to give evidence, but only in such cases as are fairly embraced in the expressions 'in any criminal case,' 'in all criminal prosecutions.' In any ordinary or commonly accepted understanding of the meaning of these expressions, an investigation begun in a court of equity to determine whether its decree, entered in a purely civil suit between private parties, had been obeyed or violated, could hardly be classed as either 'a criminal case,' or 'a criminal prosecution.' But our courts, in their solicitude to secure to the citizen the full measure of his constitutional rights, have not been content to rest their judgments upon any such consideration, but have sought for the nature and essential character of the proceeding in question, and from a study of these have determined whether, in substance, it was civil or criminal. Thus it has been held that in an action to recover penalties inflicted by a statute the defendant can neither be compelled to testify against himself, nor to produce his books to be used as evidence against him. *Boyle v. Smithman*, 146 Pa., 255, 23 Atlantic Reporter, 397. So the act of June 11, 1879 (P. L. 129), enabling a plaintiff in an execution, upon filing an affidavit of his belief that the defendant was fraudulently concealing property, etc., to examine the defendant on oath as to said property, was held to be a violation of the constitutional provision now under consideration. *Horstman v. Kaufman*, 97 Pa., 147, 30 Am. Rep., 802. In these and many other cases that could be cited the court determined that the proceeding in its nature was criminal, and thus drew the witness within the sheltering mantle of the constitution.

"What, then, was the essential character of the proceedings in the court below where the immunity from testifying and producing records claimed by certain witnesses was denied them? As we have already seen, it was simply an inquiry by a court of equity to determine whether its own decree, made in a strictly civil case, had been obeyed or contemptuously violated by the party against whom it had been entered.

"Proceedings to ascertain and publish contempt are as ancient as the courts which conduct them. It has been well said 'the power to fine and imprison for contempt, from the earliest history of jurisprudence, has been regarded as a necessary incident and attribute of a court, without which it could no more exist than without a judge.' *Watson v. Williams*, 36 Miss., 331, cited *In re Debs*, 158 U. S., 564, 15 Supreme Court Reporter, 900, 39 L. Ed., 1092. But from the earliest days of our legal history contempts of court and proceedings to ascertain them have been divided into two broad and easily distinguishable classes. Where the alleged contemptuous act is aimed directly at the power or dignity of the court, or subversive of the due administration of public law, and where the responsive act of the court is purely punitive in character, to vindicate the rights of the people at large vested in their properly constituted legal tribunals, such contempts, and the proceedings to ascertain and punish them, have always been regarded as essentially criminal, as distinguished from civil, in their character. But where the act complained of consists merely in the refusal to do or refrain from doing some act commanded or prohibited for the benefit, primarily at least, of a party litigant, proceedings to ascertain such contempts and enforce obedience to the order or decree have ever been deemed akin to execution process, and civil, rather than criminal, in their nature. 'Indeed, the attachment for most of this species of contempts, and especially for non-payment of costs and non-performance of awards, is to be looked upon rather as a civil execution for the benefit of the injured party, though carried on in the shape of a criminal process for a contempt of the authority of the court. And therefore it hath been held that such contempts, and the process thereon, being properly the civil remedy of individuals for a private injury, are not released or affected by the general act of pardon.' 4 Bl. Com., p. 285. The same distinction has been drawn by the courts of last resort of many of our States, but a quotation from one will be sufficient to make obvious the point now under consideration. In *Thompson v. Penna. R. R. Co.*, 48 N. J. Eq., 105, 21 Atlantic Reporter, 182, the court says: 'Proceedings in contempt are of two classes, namely: First, those instituted solely for the purpose of vindicating the dignity and preserving the power of the court. These are criminal and punitive in their nature, and are usually instituted by the court in the interest of the general public and not of any particular individual or suitor. Second, those instituted by private individuals for the purpose mainly, if not wholly, of protecting or enforcing private rights and in which the public have no special interest. These are remedial or civil in their nature rather than criminal or punitive.' See, also, *People v. O. & T. Court*, 101 N. Y., 245, 4 Northeastern Reporter, 259, 54 Am. Rep., 691; *Dodd v. Una*, 40 N. J. Eq., 672, 5 Atlantic Reporter, 155; *Water Co. v. Strawboard Co. (O. C.)*, 75 Federal Reporter, 972.

"Although we have been referred to no Pennsylvania case exactly in point, there is ample authority for holding that the distinction so clearly stated by the New Jersey court in the case



quoted from is recognized in our own State. Our act of 1842, abolishing imprisonment for debt, excepts from its operation 'proceedings as for contempt to enforce civil remedies.' In *Chew's Appeal*, 44 Pa., 247, it was held that a court of equity has power to enforce a decree for the payment of money by a trustee by process of attachment against his person as for a contempt. The Orphans' Court has like power. *Tome's Appeal*, 50 Pa., 285; *Com. v. Reed*, 59 Pa., 425.

"A careful study of all these cases leaves no room to doubt that the proceeding in the court below was a civil proceeding in essence and substance; that under no adjudication of the terms 'a criminal case' or 'a criminal prosecution' could it be fairly classed as either, and, as a consequence, that no constitutional right was denied to the appellants in compelling the production of the books and records referred to in the first assignment of error, which is, therefore, overruled.

"The second assignment alleges error in making absolute the rule to show cause why an attachment should not issue. The argument supporting it indicates that the ruling of the court below is challenged because there was no sufficient evidence to warrant a finding that the appellants had been in fact guilty of any violation of the decree previously entered. In other words, we are asked to review the action of the court in ascertaining the fact of a contempt of its own order and decree. As the power to ascertain the fact of a contempt is a necessary and integral part of the right of a court to enforce its own decrees and to punish those who wilfully disregard or defiantly disobey them, it has been frequently held by courts of the highest authority that the decision of the court wherein the contempt was committed is, as to the fact of such contempt, final and not the subject of review. In *re Debs*, 158 U. S., 564, Supreme Court Reporter, 900, 39 L. Ed., 1092, Mr. Justice Brewer, speaking for the whole court, says: 'But the power of a court to make an order carries with it the equal power to punish for a disobedience of that order, and the inquiry as to the question of disobedience has been, from time immemorial, the special function of the court. And this is no technical rule. In order that a court may compel obedience to its orders, it must have the right to inquire whether there has been any disobedience thereof. To submit the question of disobedience to another tribunal, be it a jury or another court, would operate to deprive the proceeding of half its efficiency.'

"The same doctrine was held by Chancellor Kent in the case of *Yates*, 4 Johns. (N. Y.), 317, and by the court of King's Bench in the case of *Earl of Shaftsbury*, 8 State Tr., 1270. In our own case of *Com. v. Newton*, 1 Grant's Cases, 453, Woodward, J., after setting forth the powers of the Supreme Court, says: 'This character of our powers can not be so narrowed by construction as to exclude proceedings for contempt. We do not, indeed, revise such cases on their merits. The courts having a limited jurisdiction in contempt, every fact found by them is to be taken as true, if it appears to us that they proceeded within and did not exceed their jurisdiction; but for the purpose of seeing that

their jurisdiction has not been transcended, and that their proceedings, as they appear of record, have been according to law, we possess, and are bound to exercise, a supervisory power over the courts of the commonwealth.'

"There being no complaint that the court below had exceeded its jurisdiction, or that its proceedings, as they appear of record, have not been according to law and precedent, speaking for myself, I would say there appears no ground for the exercise of the supervisory powers of the appellate court. But, in addition, we feel obliged to say that a careful reading of all the testimony discloses ample warrant for the finding that there was in fact a contemptuous violation of the injunction entered by the court below, and the second assignment is therefore dismissed.

"The third and fourth assignments assail the sentence imposed by the court below upon those adjudged guilty of contempt. In form and the character of the punishment inflicted the sentence is in harmony with the provisions of the act of 1836 and the decision of the Supreme Court. *Com. ex rel. v. Perkins*, 124 Pa., 36, 16 Atlantic Reporter, 535, 2 L. R. A., 223.

"The particular error alleged in this respect seems to have been that Daniel Post and Peter Koser were ordered to stand committed until the fine imposed on the Wyoming Valley District Council should be paid. It is to be remembered that this body, called the district council, was not an incorporated society. It was not a person, natural or artificial. It was but a name, adopted for their own convenience by the individuals composing it. Each individual who became a member thereby adopted that name as a proper designation of himself acting with his fellows to carry out the object common to all. Such a body could not be sued, *eo nomine*, in a common-law action. *McConnell v. Apollo Sav. Bank*, 146 Pa., 79, 23 Atlantic Reporter, 347.

"It partakes more of the characteristics of a partnership than of a corporation. The law therefore looks behind the name and deals with the individuals who move and act under and behind such name chosen by themselves. They lose neither their identity nor their individuality by the assumption of the common name. Just as the obligations and responsibilities of a partnership become those of each individual member of the firm, so, when the moment of responsibility comes, must the individual actors of a body like this stand forth from behind the veil with which they have enveloped themselves and assume their proper shares of the common burden. It is characteristic of courts of equity that they do not usually enforce their decrees by writs of execution directed in rem as do common-law courts, but by coercing the persons of individuals who have been properly brought within their grasp. Hence particular supervision of the affairs of unincorporated societies has been committed to our courts of equity as best equipped to deal with such bodies. *Fletcher v. Gawanese Tribe*, 9 Pa. Super. Ct., 393.

"The appellants Post and Koser were shown by the evidence to have been active and influential members of the 'district council.' They were present at most of the meetings of which the records were in evidence, and particularly at the one where action was taken which has

been found to be a violation of the decree. If they can not be held responsible for such a contempt none of the other members can be. Thus the court will be left to fulminate against a name only, while the living, breathing actors, who really did the acts subversive of the decree, are beyond its reach. We can not think that a court invested with the dignity and exercising the high powers of our courts of equity is so impotent to enforce its final decrees. If it must permit such contempts to go unpunished, it would soon become itself contemptible. On the whole record we are all of opinion that no substantial error has been committed by the learned court below.

"Appeal dismissed, at the costs of the appellants."

—♦♦♦—

**Landlord and Tenant—Dangerous Condition of Premises—Liability of Landlord.**

In *Finney v. Steele*, decided by the Supreme Court of Alabama, in June, 1906, (41 So., 976), it appeared that a landlord leased premises in which a person infected with a contagious disease had been. Before doing so the landlord employed a skilled physician and an experienced nurse to disinfect the premises. Experts gave their opinion that there were better means of disinfection than those used by the physician and the nurse. It was held that the landlord was not liable for injuries sustained by the tenant in consequence of his infant child becoming infected with such contagious disease. The court said in part:

"While one who rents or leases a house to another does not thereby warrant the condition of the premises unless specially mentioned, the doctrine of caveat emptor applying, yet if there are defects known to the owner rendering the premises unsafe, either from unseen dangers otherwise or from infection, the owner who conceals such dangers and fails to communicate the knowledge of the same to the party to whom the premises are leased, he being ignorant thereof, is liable to the lessee for any damages resulting therefrom. The cases base the liability variously on fraudulent concealment, on the breach of the duty which the relation implies, etc., but not upon the principle of an implied warranty. Hence, great stress is laid in the cases referred to by appellant and others on the necessity of knowledge of the defect or infection in order to fix the liability on the lessor. *Minor v. Sharon*, 112 Mass., 477, 487, 17 Am. Rep., 122, note to same case in 17 Am. Rep., 127; *Cesar v. Karutz*, 60 N. Y., 229, 19 Am. Rep., 164; *Coke v. Gutkese*, 80 Ky., 598, 44 Am. Rep., 499; *Booth v. Merriam*, Mass., 30 N. E., 85."

In another case in the Supreme Court of Massachusetts, in which a party leased premises on which there was a vault emitting offensive and dangerous odors, and had employed his own servant to throw lime in and nail boards over the vault, the court says that it is not enough that the landlord knows of the source of the danger unless also he knows or common experience shows that it is dangerous. He is bound at his peril to know the teachings of common experience, but he is not bound to foresee results of which common experience would not warn him, and which only a specialist would

apprehend (citing a number of cases). The court goes on to hold that if the defendant knew the vault was dangerous, and by his own servant undertook to remedy it by "means which were ineffectual for that purpose, and which he knew or ought to have known were ineffectual, he can not escape liability by employing a servant to do the work," because he was responsible for the act of his servant. The court also refers to a previous case in which a man, over whose hay white lead had been spilled, undertook himself to separate it, and sold some of the hay, which proved injurious, and it was held that he was liable because his belief in the success of his remedy was merely conjectural and uncertain *Martin v. Richards*, (Mass.), 29 N. E. 591, 593.

The Supreme Court of Tennessee, after a thorough examination of this subject, thus summarizes the results: "We think the great weight of authority is that if a landlord lease premises which are at the time in an unsafe and dangerous condition, he will be liable to his tenant for damages that may result, if he knows the fact and conceals it, or if by reasonable care and diligence he could have known of such dangerous and unsafe condition, provided reasonable care and diligence is exercised by the tenant on his part" (citing a number of authorities). The court proceeds to remark that "the liability does not arise upon any question of contract, but upon the obligation to the tenant not to expose him to danger of which the landlord knows, or could know by reasonable care." *Hines v. Wilcox*, 96 Tenn., 148, 33 S. W., 914, 34 L. R. A., 824, 832, 54 Am. St. Rep., 823, 830. The court reaffirmed this case on application for rehearing in which it is said that the rule imposes reasonable care, etc., page 831 of 54 Am. St. Rep. (96 Tenn., 328, 34 S. W., 420). We do not commit ourselves to going as far as this case does, but cite it as stating the doctrine in its strongest light in making the landlord liable not only for failing to make known defects that are known, but also making him responsible for those he could have discovered by reasonable care and diligence.

In the case of *Outter v. Hamlen* (Mass., 18 N. E., 397, 1 L. R. A., 429), the landlord was sued for damages resulting from his having rented a house infected with diphtheria and having defective drains. There was evidence that the house had been fumigated by the board of health and indorsed O. K. by the inspector, and the court says: "If the case stopped there we should be of opinion that the landlord was justified in assuming that the house had been disinfected, and that the requirements of *Minor v. Sharon* (supra), were satisfied" (page 398 of 18 N. E., 1 L. R. A., 429). But as there was the additional defect that the drains were known to be defective, and also that there were specific statements, the matter was held to properly have been submitted to the jury (page 399 of 18 N. E., 1 L. R. A., 429).

In the case now under consideration the only defect suggested was that there had been a case of scarlet fever in the house. It was shown without contradiction that the disinfecting of the house was intrusted by the owner to an experienced physician and a trained, experienced, and competent nurse. While there

is testimony by other experts giving their opinion that there were better means of disinfection than were used, yet there is not a word of testimony questioning the experience or competency of the physician and nurse to whom the work of disinfecting the house was committed. Dr. Wheeler, the health officer, testified that when infectious diseases were in any house it was the duty of "the attending physician and the head of the family, or the owner of the premises," to report the matter to him, which was not done when the first-named case occurred in this house. But he further testified that the health officer never disinfected premises where the attending physician attended to this. Dr. Westmoreland [to whom was intrusted the disinfecting] was the attending physician in this case. Under this state of facts and the authorities above cited, we think the defendant would have been entitled to the general charge in his favor on this case.

**Carriers—Party Injured by Panic in Street-Car Caused by a Blazing Match Thrown Away by Passenger, Which Ignited Passenger's Dress.**

[Central Law Journal.]

The case of *Fanizzi v. N. Y. & Q. O. R. Co.* (N. Y. Sup. Ct.), 99 N. Y. Supp., 281, presents an interesting question of law. It appears that a passenger on a street-car, who was smoking, struck a match and then threw it away while lighted, so that it ignited the frock of a female passenger, which blazed and caused a panic in the car, because of which the plaintiff was thrown, pushed or jumped off the car and was injured. The motorman then stopped the car and acted promptly in the emergency in extinguishing the fire. The court held such facts were insufficient to establish negligence on the part of the company. In the appellate division of the Supreme Court the decision was sustained. Mr. Justice Jenks rendered the opinion as follows: "I think that the learned County Court did not err. (1) Without regard to the rule. There is no proof tending to show negligence after the discovery of the accident. On the contrary the testimony shows that the motorman stopped the car, and then acted promptly in the emergency in extinguishing the fire and in saving the passenger from injury. I can not discriminate the case from that of *Sullivan v. The Railway Co.*, 133 Mo., 1, 34 S. W. Rep., 566, 32 L. R. A., 167, which in its facts is strikingly similar. The judgment in that case absolves the defendant upon grounds that to me seem cogent and convincing. (2) With regard to the rule. If the passenger who struck the match had not sat in such proximity to the woman with the flimsy frock as that a flaring match carelessly cast aside might come in contact with the frock, then there would have been no burning of the frock from that cause; and if the passenger had not required a lighted match he would not have struck it; and if he had not been smoking and desired to relight his cigar, or cigarette or pipe, or proposed to smoke, he would not have struck the match; and if he had not struck the match it would not have been aflame, so as to ignite the frock; and if the passenger had complied with the regulation, or it had been enforced when he broke it, then he

would not have smoked or have begun to smoke in that seat. But until you can predicate of a passenger who is smoking or proposes to smoke, while occupying a seat other than those reserved for smokers, that as the result of such act he will strike a match and will cast it aside while aflame in such a fashion as to ignite any inflammable material then near him, 'you have,' in the words of McSherry, C. J., in *Tall v. Steam Packet Co.*, 90 Md., 259, 44 Atl. Rep., 1010, 47 L. R. A., 120, 'speculation.' The learned judge further says: 'You may have a sequence of events which are purely accidental in their relation, but are not inherently or necessarily the successive results of preceding causes.' In *Tall's* case, *supra*, during a game of cards played in the defendant's boat, a dispute arose, angry words followed, and one of the gamblers shot at his opponent, missed him, and hit the plaintiff. The trial court, excluded a rule that prohibited gambling on the boat, and the Court of Appeals held that the ruling was proper, inasmuch as even if the captain had violated any rule, that fact was not evidence of negligence that contributed to the injury. The discussion on the judgment seems to me lucid and logical, and the principle asserted is applicable to the case at bar. Writing for this court, I have discussed the question of proximate cause at great length in *Trapp v. McClellan*, 68 App. Div., 362, 74 N. Y. Supp., 130, and I think much of that discussion is germane to this case. The request for submission was limited to the question whether the violation of the rule against smoking, save in the last three seats, was the cause of the accident. There was no dispute as to the facts, and therefore the question of proximate cause was for the court. *Hoffman v. King*, 160 N. Y., 615-628, 55 N. E. Rep., 401, 46 L. R. A., 672, 73 Am. St. Rep., 715."

**Ditches as Parts of Highways.**

[London Law Journal.]

As a rule where an inclosure adjoins a public highway and a ditch is made outside the inclosure and between it and the highway, the ditch is part of the inclosure. The reason given by Mr. Justice Holroyd in *Doe v. Pearsey*, 7 B. & C., 307, is that, generally speaking, where an inclosure is made, the person making it erects his bank and digs his ditch on his own ground on the outside of the bank. The land which constitutes the ditch is in point of law part of the close, though it be on the outside of the bank. And if something further is done for the party's own convenience when that which constitutes the fence is dug out from his land—as, for instance, if a small portion of uninclosed land near a public or private way is left out of the inclosure to protect and secure the occupation of that part of the land which is inclosed—that also is, in point of law, parcel of the inclosure. So, also, where two fields are separated by a hedge and a ditch, the hedge is presumed to belong to the owner of the land on the side on which the ditch is not; for a person who digs a ditch begins on the extreme boundary and throws the soil on to his own land. But there is no rule of law that a ditch which runs alongside a highway between the road and the fence can not be dedicated as part of the

highway because it does not form part of the roadway and can not be used by the public for purposes of passage; for the ditch may be treated as an obstruction or excavation, subject to which, so long as the obstruction or excavation continues to exist, the highway is dedicated; but the surface of which, if by natural or other causes the ditch is filled or silted up wholly or partially, thereupon becomes wholly or partially land which must be treated as part of the original highway. This appears from the decision in the recent case of *The Chorley Corporation v. Nightingale*, 75 Law J. Rep. K. B., 793; L. R. (1906), 2 K. B., 612, in which there was no evidence to show when the ditch in question was made. A similar question arises from time to time as to the ownership of strips of waste land beside a high road; as to the origin of which, it was pointed out by Lord Chief Justice Abbott in *Steel v. Prickett*, 2 Starkie, 469, that in ancient times, when roads were made through uninclosed lands, they were not "formed with that exactness which the exigencies of society now require." For the public, when the road was out of repair, might pass along the land by the side of the road; so when a man inclosed his land from the road, he would not make his fence close to the road, but would have an open space at the side for the public to use when occasion required.

**Negligence—Injury to Licensee.**—Where plaintiff entered the premises of the defendant railroad company as a volunteer and licensee, and fell and was injured, the railroad company was not liable. *Jenkins v. Central of Georgia Ry. Co.*, (Ga.), 53 S. E. Rep., 379.

**Negligence—Submission of Issues to Jury.**—Where a court can see testimony from which a probability can legitimately arise in favor of plaintiff suing for death negligently inflicted, the cause should be submitted to the jury. *Powers v. Pere Marquette R. Co.*, (Mich.), 106 N. W. Rep., 1117.

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**Accident Insurance—Bodily Infirmary or Disease.**—An exemption in an accident policy from liability for death resulting from bodily infirmity or disease held not to include bacterial septicæmia immediately following an accidental injury. *Oary v. Preferred Acc. Ins. Co. of New York (Wis.)*, 106 N. W. Rep., 1055.

**Negligence—Dangerous Premises.**—The proprietor of premises used for business owes a duty to customers to keep the same reasonably safe, or to warn customers of any danger known to such proprietor and unknown to the customer. *Shaw v. Goldman*, (Mo.), 97 S. W. Rep., 165.

### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

### Legal Notices.

#### FIRST INSERTION.

S. H. Gusey, Solicitor

In the Supreme Court of the District of Columbia, Bertha C. Wilcox, Plaintiff, v. Samuel D. Cruttenden, Henry E. Stone, Nellie Field, et vir; Edward E. Field, Sarah Hull, Edward A. Chittenden, Jeannette Cruttenden, Benjamin Rossiter, John Rossiter, Adeline Rossiter, Frances Rossiter, Anna Rossiter, Lois R. Foote, Mary R. Newton, et vir; Arthur S. Newton, Duane J. Kelsey, Ida B. Billman, et vir; Ira Billman, Gertrude E. Stevens, et vir; A. B. Stevens, Bertha C. Coward, Curtiss Wilcox, Kate Wilson, Curtiss A. Hall, Defendants. No. 28,605. Equity Docket No. 59.

The object of this suit is to sell lot eight (8), in square four hundred and three (403), improved by houses 806 and 808 K street N. W., Washington, D. C., and from the proceeds to pay the creditors of Augustus C. Wilcox, deceased, their claims and his widow an allowance in lieu of dower and the tenants in common of the heirs of said Wilcox their respective proportions of such proceeds. On motion of the complainant it is, this 22d day of October, A. D. 1906, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order in The Washington Post and The Law Reporter; otherwise the cause will be proceeded with as in case of default. By the Court: HARRY M. CLABAUGH, Chief Justice. True copy. Test:

[Seal] John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 48-8t

Crothwaite & Colladay and Harry F. Lerch, Solicitors

In the Supreme Court of the District of Columbia, Thomas O'Neill, Trading as O'Neill & Company, Plaintiff, v. Helen B. Ferrell, Otherwise Known as Helen B. Gilbertson, Defendant.

At Law, No. 48,818.

The object of this suit is to recover the sum of \$481.52, with interest, according to the particulars of demand attached to the declaration herein, due the plaintiff from the defendant, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 18th day of October, 1906, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day. By the Court: WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by Alf. G. Buhrman, Asst. Clerk. 48-8t

[Seal] Alf. G. Buhrman, Asst. Clerk. 48-8t

**Legal Notices.**

**Barnard & Johnson, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia ancillary letters testamentary on the estate of Georgia H. Williams, late of the State of Connecticut, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of October, 1906. J. FLOYD JOHNSTON, 16 and 18 Exchange Place, New York, N. Y. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,958. Administration. [Seal.] 43-St

**Mason N. Richardson, Attorney**  
**Supreme Court of the District of Columbia**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Elizabeth B. Hirst, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of October, 1906. HOMER T. HIRST, 1828 Swan St. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,968. Administration. [Seal.] 43-St

**Lester & Price, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Charles G. Zange, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of October, 1906. MARY M. E. STENZ, 925 9th St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,973. Administration. [Seal.] 43-St

**William K. Quinter, Worthington, Heald & Fralley,**  
**Attorneys**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the State of Michigan, has obtained from the Probate Court of the District of Columbia ancillary letters of administration on the estate of Henry W. Seymour, late of Saute Ste. Marie, Michigan, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscriber, on or before the 30th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of October, 1906. HARRIET G. SEYMOUR, 1917 Kalorama Road. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,863. Admn. [Seal.] 43-St

**George C. Gertman, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Apollonia Hutchinson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 25th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of October, 1906. JACOB L. HUTCHINGSON, 221 2d St. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,969. Administration. [Seal.] 43-St

**Legal Notices.**

**Jas. D. Sullivan, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of William J. Harrington, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 25th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of October, 1906. PATRICK F. HARRINGTON, 2330 Brightwood ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,983. Administration. [Seal.] 43-St

[Filed October 22, 1906.]  
**A. Leftwich Sinclair, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Special Term as a District Court of the United States for the District of Columbia.**

**In the Matter of the Payment of Damages Resulting to Adjacent Property from Changes in the Grade of Streets, Avenues, and Alleys Authorized by the Act of Congress Approved February 12, 1901, Relative to the Elimination of Grade Crossings on the Line of the Baltimore and Potomac Railroad Company, in the District of Columbia. District Court. No. 671.**

Notice is hereby given that we, the undersigned, having been designated and appointed by the Supreme Court of the District of Columbia, holding a special term as a United States District Court for the District of Columbia, as a commission to appraise the damages resulting to adjacent property from changes of the grades of streets, avenues, and alleys authorized by the act of Congress approved February 12, 1901, relative to the elimination of grade crossings on the line of the Baltimore and Potomac Railroad Company in the District of Columbia, will meet at 10.30 o'clock A. M., on Friday, the 30th day of November, A. D. 1906, at the United States Court House (City Hall), in said District, in a room to be assigned us by the United States Marshal for said District, for the purpose of viewing the property affected by the changes in the grades of the following-named streets and hearing testimony touching the damages resulting to real property from said changes of grades, pursuant to the terms and provisions of an act of Congress approved June 28, 1906, entitled "An act to provide for payment of damages on account of changes of grade due to the elimination of grade crossings on the line of the Philadelphia, Baltimore and Washington Railroad Company," to wit: 1 street S. E., between 6th street and Virginia avenue; 1 street S. E., between 6th and 7th streets; K street S. E., between 6th and 7th streets; K street S. E., between 7th street and Virginia avenue; 6th street S. E., between G and I streets; 6th street S. E., between Virginia avenue and K street; Virginia avenue S. E., between 6th and 7th streets; Virginia avenue S. E., between 6th and 7th streets; Virginia avenue S. E., between 7th and 8th streets; Virginia avenue S. E., between 7th and 8th streets; Virginia avenue S. E., between 2d and 3d streets; H street S. E., between 1st and 2d streets. All owners of real property damaged by the changes in the grades of said streets will file a petition with us, in this cause, signed and sworn to, for an allowance of damages, within twelve months after the said 30th day of November, A. D. 1906. The aforesaid act of Congress approved June 28, 1906, provides that upon the failure of any such owner to thus present his claim within said period, his right to do so shall cease and determine. CHARLES A. BAKER, GEORGE W. MOSS, GEORGE SPANSTY, Commission to Appraise Damages. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk.

Oct. 28, nov. 2, 9, 16, 23

**Alex. H. Beil, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John Fraas, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of October, 1906. FRANK P. MADIGAN, 14th and D sts. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,965. Administration. [Seal.] 43-St

**Legal Notices.**

**R. Ross Perry & Son, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscribers, who were by the Supreme Court of the District of Columbia granted letters testamentary on the estate of James W. Orme, deceased, have with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 12th day of November, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 24th day of October, 1906. WILLIAM B. ORME, CHARLES B. BAILEY. By R. Ross Perry & Son, Attorneys. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,201. Administration. [Seal.] 43-3t

**John B. Lerner, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**Estate of Susan W. Fowler, Deceased.**

**No. 13,962. Administration Docket—**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate by Philip Lerner, the executor named therein, it is ordered, this 24th day of October, A. D. 1906, that Mary W. North, Harold Havens, both of lawful age and residents of New York City, State of New York, and all others concerned, appear in said court on Monday, the 26th day of November, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the

[Seal] first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice, Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 43-3t

**SECOND INSERTION.**

**Perri W. Firshy, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**In re Estate of Mary L. Reddick, Deceased.**

**Administration. No. 12,855.**

**DECREE NISI.**

**(Confirming Sale of Real Estate.)**

Upon consideration of the report of Philip Stewart, executor, in the above entitled cause, filed herein on the 11th day of October, A. D. 1906, that he had sold the following described land and premises situated in the city of Washington, District of Columbia, distinguished as sub lot 23, in square 1095, in James F. Wollard's subdivision, as the said subdivision appears of record in the plats or plans of Washington, in the surveyor's office of the District of Columbia, together with the improvements thereon, consisting of a two story frame dwelling, known as premises No. 1708 East Capitol st., Northeast, in the District of Columbia, said land and premises having been sold on the 8th day of October, A. D. 1906, to Eugene S. Gaskins for \$335, upon the terms of one-third cash, a deposit of \$100 made at the time of sale and the balance payable in equal installments in one and two years from the day of sale, and to be represented by promissory notes of the purchaser bearing interest at the rate of six per cent per annum, payable semi-annually, and secured by a deed of trust on the property sold, or all cash, at the option of the purchaser, with the conveying, examination of title, and notarial fees at the cost of the purchaser, it is, by the court, this 16th day of October, A. D. 1906, adjudged, ordered, and decreed that the said sale be, and the same is, hereby ratified and confirmed, unless cause to the contrary be shown on or before the 16th day of November, A. D. 1906. Provided a copy of this decree be published in The Washington Law Reporter and The Washington Bee once a week for three successive

[Seal] weeks before the last said day. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 42-3t

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W.

**Legal Notices.**

**D. W. Baker, Solicitor**

**In the Supreme Court of the District of Columbia,**  
**The United States of America v. John F. Gaynor,**  
**William T. Gaynor, Anson M. Bangs, Henry Clews**  
**& Company, Henry Clews, James H. Clews, John**  
**H. Clews, Charles P. Holzderber, Leslie M. Shaw,**  
**Secretary of the Treasury of the United States.**  
**Equity No. 23,455. Docket No. 53.**

The object of this suit is to restrain and enjoin Leslie M. Shaw, Secretary of the Treasury of the United States, from delivering twenty-five U. S. bonds, five per cent, matured February 1, 1904, together with all coupons and any increment or interest thereof, and presented to the Secretary of the Treasury, on July 12, 1906, for payment, unto Henry Clews & Company, or the defendant; Anson M. Bangs, or the defendants John F. Gaynor and William T. Gaynor, or any one for them; or from paying over to any of the above mentioned defendants the proceeds of said bonds; and to obtain from the court its final decree that the said twenty-five U. S. bonds, together with all coupons and any increment or interest thereof, shall be impressed in the hands of the said Leslie M. Shaw with a trust for the use and benefit of the complainant, the United States of America, and that the said court shall decree that the said bonds are held by defendants, Anson M. Bangs, Henry Clews & Company, representing the defendants, John F. Gaynor and William T. Gaynor, in trust for the complainant, United States of America, as the investments of part of the proceeds of a certain fraudulent and criminal conspiracy between the said defendants, John F. Gaynor and William T. Gaynor, and Oberlin Carter, and divers other persons set up in said bill, to defraud the United States in the construction of certain work in connection with the river and harbor improvements in the Southern Judicial District of Georgia called "Savannah District" and more particularly set out in said bill, the proceeds or part of the proceeds of said conspiracy being traced to the aforesaid investments made in the said bonds in the names of said defendants, John F. Gaynor and William T. Gaynor and being held for said defendants, John F. Gaynor, and William T. Gaynor, by the defendant, Anson M. Bangs, and by him presented through the defendant Henry Clews and Company to the said Secretary of the Treasury for payment; and that the court shall provide in said decree that the said bonds, together with the coupons and increment thereof, shall be delivered over to complainant, the United States of America, or that the proceeds thereof shall be paid to the said complainant. On motion of the complainant, it is, this 17th day of October, A. D. 1906, ordered that the defendants, John F. Gaynor, William T. Gaynor, and Anson M. Bangs, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided, a copy of this order be published once a week for three successive weeks in

The Washington Law Reporter and The Washington Post before said day. ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by R. P. Belew, Asst. Clerk. 42-3t

[Filed October 12, 1906. J. R. Young, Clerk.]

**Tucker & Kenyon, Solicitors**

**In the Supreme Court of the District of Columbia,**  
**Nettie F. Tebbis, Complainant, v. James H. C. Wilson,**  
**Defendant. No. 28,285. Equity Doc. 58.**

The object of this suit is partition of part of a tract of land situate in the county of Washington, District of Columbia, called "Weaver's Prospect," more particularly described in the bill of complaint filed in the aforesaid suit. On motion of the complainant, it is, this 12th day of October, 1906, ordered that the defendant, James H. C. Wilson, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in

The Washington Law Reporter and The Washington Herald before said day. HARRY M. CLA BAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 42-3t

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**Legal Notices.**

**T. Percy Myers, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of John A. Barber, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 5th day of November, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 12th day of October, 1906. J. WILLIAM HENRY, by T. Percy Myers, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,256. Administration. [Seal.] 42-St

**In the Supreme Court of the District of Columbia,**  
**Thomas O'Neill, trading as O'Neill & Company, Plain-**  
**tiff, v. Helen B. Ferrill, otherwise known as Helen**  
**B. Gilbertson, Defendant. At Law, No. 48,818.**

The object of this suit is to recover the sum of \$481.52, with interest, according to the particulars of demand attached to the declaration herein, due the plaintiff from the defendant, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 18th day of October, 1906, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter before

[Seal] said day. By the court: WRIGHT, Justice.  
 A true copy. Test: J. R. Young, Clerk, by Alf. G. Buhrman, Asst. Clerk. 42-St

**Barnard & Johnson, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Brison Norris, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 5th day of November, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 12th day of October, 1906. MARY E. NORRIS, Executrix, by Barnard & Johnson, Attorneys. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,207. Administration. [Seal.] 42-St

[Filed July 20, 1906. J. R. Young, Clerk.]

**W. E. Poulton, Jr., Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Cotter T. Bride v. The Unknown Heirs, Devisees, and**  
**Allenees of James Neale, "of Bennet," Deceased.**  
**Equity No. 26,148. Doc. No. 58.**

On motion of complainant, it is, this 20th day of July, A. D. 1906, ordered that the defendants, the unknown heirs, devisees, and allenees of James Neale, "of Bennet," deceased, cause their appearance to be entered herein, on or before the first rule day, occurring three (3) months after the day of the first publication of this order; otherwise this cause will be proceeded with as in case of default. The object of this suit is to declare the title of complainant to lot numbered two (2) in square numbered five hundred and ninety-nine (599), in the city of Washington, in the District of Columbia, to be good in fee simple by adverse possession.

[Seal] By the court: ASHLEY M. GOULD, Justice.  
 A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk.

sept 21, 23; oct 19, 26; nov 16, 23.

Justice blanks of every description for sale at this office.

**Legal Notices.**

**Milton D. Campbell, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Charles A. Chapman, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the 18th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of October, 1906. ANNIE WILLIAMS, care of Milton D. Campbell, 1331 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,563. Administration. [Seal.] 42-St

**S. T. Thomas, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of David E. Harrette, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of October, 1906. S. T. THOMAS, 452 D st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,967. Administration. [Seal.] 42-St

**Bates Warren and Wm. L. Browning, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the State of Pennsylvania, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Anna Waackwitz Kummell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of October, 1906. TILLIE BRESFORD, 7233 Mt. Vernon st. E. E., Pittsburgh, Pa. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,972. Administration. [Seal.] 42-St

**J. A. Maedel, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Charles Schroth, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 18th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of October, 1906. FRANK SCHROTH, 1435 Md. ave. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,932. Administration. [Seal.] 42-St

**Victor H. Wallace, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Cyrus Snyder, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of October, 1906. JULIA N. SNYDER, 1423 6th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,860. Administration. [Seal.] 42-St



**Legal Notices.**

**John B. Lerner, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Robert M. Lerner, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of October, 1906. JOHN B. LERNER, 1385 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,944. Administration. [Seal.] 42-81

**Erskine Gordon, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John A. Bryan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of October, 1906. ERSKINE GORDON, 830 John Marshall Place. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,884. Administration. [Seal.] 42-81

**Trustees' Sale of Valuable Improved Real Estate.**

By virtue of a power of sale contained in a deed of trust given by George W. Adams to Marion Duckett and Elbert Dent, trustees, dated February 2, 1904, and recorded February 3, 1904, in liber No. 2794, at folio 261 et seq., one of the land records for the District of Columbia, default having been made in the payment of the indebtedness therein set forth, the undersigned, surviving trustee, will sell at public auction, on the premises, on Monday, October 29, 1906, at 3 o'clock P. M., all the land described in said deed of trust, being a part of original lot No. 26, in square numbered 552 of Washington City, D. C., beginning at a point on the south line of Q street, N. 20 feet E. of the northwest corner of said lot; thence east along said line of Q street 20 feet; thence S. 105 feet; thence W. 20 feet, and thence N. 105 feet to the beginning, improved by a small frame dwelling, No. 120 Q street N. W. Terms of sale: Cash; \$100 deposit required at the time of sale. Conveyancing at the cost of the purchaser. MARION DUCKETT, Surviving Trustee, 885 Fst. N. W., Washington, D. C. 42-81

**Wm. A. McKenney, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Fanny Bryan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 14th day of September, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of October, 1906. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,804. Administration. [Seal.] 42-81

**William Hitz and Wm. A. Kenney, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Walter W. Burdette, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 9th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 9th day of October, 1906. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary; WILLIAM HITZ, 1817 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,826. Administration. [Seal.] 42-81

**Legal Notices.**

**W. Gwynn Gardiner, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Adam Stenhouse, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscriber, on or before the 15th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of October, 1906. W. GWYNN GARDINER, Fendall Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,950. Administration. [Seal.] 42-81

**W. H. Sholes, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Asa Hazelton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of October, 1906. ANNA S. HAZELTON, 1215 9th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,947. Administration. [Seal.] 42-81

**Samuel Maddox, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Thomas Culhane, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 5th day of November, 1906, at 10 o'clock A. M., as the time, and said courtroom as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 16th day of October, 1906. BRIDGET M. CULHANE, administratrix, by Samuel Maddox, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,199. Admn. [Seal.] 42-81

**THIRD INSERTION.**

**Dani. W. O'Donoghue, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Lawrence O'Neill, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 9th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of October, 1906. MARY O'NEIL, 721 22d st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,952. Administration. [Seal.] 41-81

**Nelson Wilson, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Blanche E. Walker, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of October, 1906. GEORGE E. WALKER, 1929 Calvert st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,957. Administration. [Seal.] 41-81

**Legal Notices.**

**John L. Johnson, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Eveline Hawkins**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 9th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of October, 1906. **JOHN LEWIS JOHNSON**, 600 8th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,865. Administration. [Seal.] 41-St

**Newton & Gillett, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Archibald Upperman**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of October, 1906. **ALEXANDER KENT**, 26 T st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,928. Administration. [Seal.] 41-St

**Richard P. Evans, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Pinkney W. Smith**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of October, 1906. **ROBERT L. EWING**, 106 5th st. N.E. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,939. Administration. [Seal.] 41-St

**Supreme Court of the District of Columbia,**  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Delos Lloyd**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of October, 1906. **SARAH A. LLOYD**, Executrix. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,900. Admn. [Seal.] 41-St

**Merillat & Richardson, Solicitors**  
In the Supreme Court of the District of Columbia.  
**Charles H. Merillat et al. v. Lyman D. Landon et al.**  
Equity, No. 28,896.

The object of this suit is to subject the pretended interest of **Lyman D. Landon** and **Susie V. Kimberly** in a certain tract of land known as **Dry Meadows**, in the District of Columbia, to the lien of a decree or judgment against **Thomas G. Hensley** and **Melville D. Hensley**. On motion of the complainant, it is, this 11th day of October, A. D. 1906, ordered that the defendant, **Leonard H. Dyer**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in *The Washington Law Reporter* and the *Evening Star* before said day. **HARRY M. CLABAUGH**, Chief Justice. A true copy. Test: **J. R. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. 41-St

**Legal Notices.**

**Eugene A. Jones, G. C. Shinn, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Jessie Bingham Frasier**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of October, 1906. **EUGENE A. JONES**, Commercial Bank Building. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,892. Administration. [Seal.] 41-St

**Wilton J. Lambert, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Leander Van Blawick**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 9th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 9th day of October, 1906. **MARY VAN RISWICK**, 105 2d st. N. W.; **WILTON J. LAMBERT**, 410 5th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,974. Administration. [Seal.] 41-St

**Henry E. Davis, Attorney**  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.  
In the Matter of the Estate of **James K. Murphy**,  
Deceased.  
Admn. No. 18,809.

Application having been made herein for the probate of the last will and testament of **James K. Murphy**, deceased, and for letters testamentary on said estate, by **Sarah K. Foss**, it is, this 10th day of October, A. D. 1906, ordered, that **John M. Murphy** and **Francis P. Murphy**, and all others concerned, appear in said court on the 15th day of November, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in *The Washington Law Reporter* and *The Washington Post* once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.  
[Seal] **ASHLEY M. GOULD**, Associate Justice. A true copy. Attest: **James Tanner**, Register of Wills. 41-St

**FOURTH INSERTION.**

**Ralston & Siddons, Solicitors**  
In the Supreme Court of the District of Columbia.  
**Joseph Ralston Morris v. The Unknown Heirs, Devisees, and Alienees of Appolona Whitehair, and The Unknown Heirs, Devisees, and Alienees of Justinian Mayberry.** Equity No. 26,496. Doc. 58.

The object of this suit is to obtain a decree of this court vesting title by adverse possession in the premises known as **sublot nineteen (19)** in square one hundred and three (108), **Washington, D. C.**, as per plat recorded in **liber H. D. C., folio 145** of the District of Columbia land records. On motion of the complainant, by **Ralston & Siddons**, his solicitors, it is, this 18th day of September, 1906, ordered that the defendants, the unknown heirs, devisees, and alienees of **Appolona Whitehair**, and the unknown heirs, devisees, and alienees of **Justinian Mayberry**, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three months in *The Washington Law Reporter* and *The Evening Star* before said date. **HARRY M. CLABAUGH**, Chief Justice. A true copy. Test: **J. R. Young**, Clerk, by **J. W. Latimer**, Asst. Clerk. sept 21, 28; oct 19, 26; nov 23, 30

Justice blanks of every description for sale at this office.

# The Washington Law Reporter

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### The Late Chief Justice Richard H. Alvey.

The bar of the District of Columbia expressed in fitting terms its high regard for the late Chief Justice Richard H. Alvey, both as a judge and man, at a meeting held on Thursday, November 1, 1906. The attendance was large and included the judges of the Court of Appeals and the Supreme Court of the District of Columbia, members of the District bar, and representatives of the bar of Maryland. Chief Justice Shepard, of the Court of Appeals, presided.

A committee on resolutions, composed of Mr. R. Ross Perry, Mr. Henry E. Davis, Mr. Wm. F. Mattingly, Mr. Nathaniel Wilson, Mr. Melville Church, Mr. J. J. Darlington, Mr. A. A. Hoehling, Jr., Mr. A. S. Worthington, Mr. George E. Hamilton, Mr. Samuel Maddox, Mr. D. W. Baker, and Mr. F. D. McKenney, submitted their report through the chairman, Mr. Perry. Addresses were made by Mr. Perry, Mr. Davis, Mr. Maddox, Mr. Chief Justice Olabaugh, and Mr. Chief Justice Shepard, and by Mr. George Whitelock, of Baltimore, as representing the bar of Maryland. It was a remarkable tribute to the memory of a great judge—the more remarkable in that it was so richly merited. The

things said of him, in the resolutions and in the addresses, could be truly said of but few men; but all who heard them recognized that as to Chief Justice Alvey they were not merely the words of eulogy, but of just tribute to a great and good man and jurist.

It will be our privilege at an early day to give a full report of the proceedings, including the resolutions and addresses.

### Fall Examination for District Bar.

The fall examination of applicants for admission to the bar of the Supreme Court of the District of Columbia will be held on November 23 and 24, 1906, in the Georgetown Law Building, 508 E street N. W. Assistant United States Attorney Ralph Given, the secretary of the committee, has published a notice that those desiring to take the examination must file their applications on or before November 18.

### Notice to Counsel in Criminal Cases.

Mr. Justice Stafford, holding Criminal Court No. 1 of the Supreme Court of this District, has caused to be posted a notice to counsel employed in criminal cases calling upon them to enter their formal appearance with the clerk prior to the arraignment of the accused, otherwise counsel will be assigned to represent him. The requirement is in the interests of justice, inasmuch as it enables a defendant to be advised of his legal rights before being called upon to plead to an indictment against him.

### Carriers—Personal Injuries—Proximate Cause.

An interesting decision on proximate cause was rendered by the Supreme Court of Colorado in the recent case of Snyder v. Colorado Springs and Cripple Creek District Railway Co., 85 Pac. Rep., 686. A passenger on a crowded car was standing on the platform with other passengers, some of whom were on the steps below. The conductor, in pushing his way through the crowd of passengers, pressed the plaintiff against one who became angry, and pushed the plaintiff with such force that he was thrown from the car, passing over the heads of passengers standing on the lower steps. The court says that the proximate cause of the accident was the action of the passenger who pushed the plaintiff, and cites its previous definition of proximate cause as that which is natural and continued sequence, unbroken by any efficient intervening cause, produced the result complained of, and without which the result could not have occurred. Under this doctrine the company was held not to be liable.

**Where Part of the Consideration of a Contract is Void, Illegal, or Unenforceable.**

[W. P. Rodgers, Dean Cincinnati Law School, in Ohio Law Bulletin.]

At a recent examination given to the applicants for admission to the bar in Ohio, the following appears in the list of questions on contracts:

"A parol contract was made on an indivisible consideration which provided that one party should, upon the death of the other, succeed to all the property of the latter. The property of the latter included real estate as well as personal property. Is such a contract within the operation of the statute of frauds?"

The question grows out of the case of *Shahan v. Swan*, 48 O. S., 25, which is an action brought for the specific performance of a contract, wherein one Woodbridge agreed that in consideration of Mary J. Swan becoming his adopted child and living with his family as a member of his household she should be made his heir and succeed at his death to all his property. She performed her part of the agreement, but Woodbridge failed to comply with his part of the contract to leave his property to her, which at his death consisted of both real estate and personalty.

The court properly decided that plaintiff could not have specific performance of this parol contract. There was no memorandum in writing concerning the real estate and no part performance to take this part of the contract out of the statute of frauds.

As to the personal property, there of course could be no specific performance, as this kind of action does not apply to contracts to sell such property.

But if it had happened that at the death of Woodbridge his whole estate had consisted of personal property, and he had by will left it to others or had made no provisions by which plaintiff should succeed to it in accordance with his contract, would the contract then have fallen within the statute of frauds? Certainly not. Would she then have had a right of action for breach of the contract? That she would no one perhaps will deny.

If the estate had consisted of one acre of worthless land, and personalty of the value of \$50,000, would plaintiff under the same conditions not have had an action for breach of the contract to the extent of the value of the personalty? Had she not a right to waive that part of defendant's promise which was unenforceable, the parol promise concerning the land, and to insist on performance or damage for breach of that part of the promise which was binding, though in parol, the promise to leave her his personal property?

In answer to the question put, "Is such contract within the operation of the statute of frauds?" would it not be proper to say: It is as to the real estate, but not as to the personal property. And this inquiry discloses some phases of the law of contracts which are intricate and which perhaps neither the author of this question nor the candidates who answered it had in mind.

It is the purpose of this article to discuss some of these questions. In this discussion one

naturally begins with *Pigot's case* (11 Coke Rep., 27b), decided in 1615, where it was held that if some of the covenants of an indenture or of the conditions indorsed upon a bond are against law, and some good and lawful, the covenants or conditions which are against law are void ab initio and the others stand good.

This principle of law which comes on down through the cases is no better stated in recent decisions than in *Widoe v. Webb*, 20 O. S., 435. The court there said that where for a legal consideration a party undertakes to do one or more acts and some of them are unlawful, the contract is good for so much as is lawful and void for the residue. Whenever the unlawful part of the contract can be separated from the rest it will be rejected and the remainder established.

The same court later quoting and approving this proposition (*Ohio, ex rel., v. Board of Education*, 35 O. S., 519) points out the danger of inaccurate thinking along this line and the necessity of clearly distinguishing this rule from another, closely related, but leading to a different result. It is there said:

"Care must be taken not to confound this rule with another equally well settled, that where one of two considerations is illegal, and the other legal, the illegality of the one avoids the promise founded on both.

"In the former case there is one lawful and valuable consideration to support two promises, one legal, the other illegal, which are separable. In the latter case there are two considerations, one legal, the other illegal, to support one promise. The reason for this well-marked distinction is that in the latter case, the promise being supported by two considerations, one lawful, the other unlawful, is an entirety based upon both, and can not be apportioned, and it is against public policy to enforce a promise so supported. In such case both considerations as a whole are the basis of the entire promise.

"Where, however, the whole consideration is lawful, and the promisor undertakes to do two things, one that is lawful and the other unlawful, and they are clearly distinguishable, the good consideration will support the lawful promise."

While the court's conclusion is correct it is assumed that there must of necessity be two contracts of different kinds to illustrate the two rules under consideration.

This view is the basis for the somewhat inaccurate language in a portion of the quoted opinion. If, for illustration, a single contract is taken, wherein A promises to do two or more distinct things, one of which is legal and the other illegal or void, in consideration of which promise B agrees to pay \$1,000, B upon performing his promise may waive the void or illegal promise of A and enforce A's valid promise, although both stand as the consideration for B's promise. On the other hand, A will not be able to enforce the contract against B, since the void or illegal, as well as the legal portion, formed a part of the consideration. He therefore can not make a valid tender of all he agreed to do, and hence can not so place B in default as to have a right of action against him.

The courts are not at all clear concerning the nature or extent of the illegal promise, so com-

bined with a legal promise, which may be waived by the other party to the contract, but it would seem that such illegal promise must not be malum in se, or of a criminal nature.

It was decided in *Gelpoke v. City of Dubuque*, 1 Wallace, 221, Mr. Justice Swaine delivering the opinion, that where some parts of a contract are illegal while others are legal, the legal may be separated from the illegal if there be no imputation of malum in se; and if the good part show a cause of action, that it is error to sustain a demurrer to the whole. Referring to counsel's contention that certain provisions of the contract were invalid, he said:

"Conceding this to be so, they are clearly separable and severable from the parts which are relied upon. The rule in such cases, where there is no imputation of malum in se, is that the bad parts do not effect the good. The valid may be enforced."

The same doctrine is stated in *United States v. Bradley*, 10 Peters, 360, and is supported by the citation of many authorities by Mr. Justice Story, who delivered the opinion in that case.

Among other things bearing upon the subject he says:

"That bonds and other deeds may, in many cases, be good in part and void for the residue, where the residue is founded in illegality, but not malum in se, is a doctrine well founded in the common law and has been recognized from a very early period . . . The doctrine has been maintained and is settled law at the present day in all cases where the different covenants or conditions are severable and independent of each other and do not import malum in se."

In the case of *The Erie Ry. Co. v. U. L. & E. Co.*, 35 N. J. L. R., 240, the question arose upon the provisions of a contract, part of which were legal and the others illegal. The defendants, common carriers, had bound themselves to give plaintiffs the exclusive right to carry locomotives and tenders on trucks over plaintiff's road, and this provision was illegal and was connected with other provisions in the contract which were legal. Both the legal and the illegal provisions were supported by the same consideration moving from plaintiff.

The defendant refused to perform the contract or any part of it, and plaintiff sued for damages on account of the breach of legal provisions. Defendant maintained that since one of the provisions were illegal the others were also void; but the court held that plaintiff could recover on the stipulations which were legal. The court said:

"Admitting then for the purpose of the argument the illegality insisted upon, the legal problem plainly is this: Whether where a defendant has agreed to do two things which are entirely distinct, and one of them is prohibited by law, and the other is legal and unobjectionable, such illegality of the one stipulation can be set up as a bar to a suit for a breach of the latter and valid one. . . . An examination of the authority will show that the rule of law upon the subject has from the earliest times been at rest."

The court then asserts that from the time of *Pigot's* case to the present time the courts have universally admitted the doctrine, and many authorities are cited to sustain the proposition. *Chesman v. Nainby*, 2 Lord Raymond, 1456; 3

*Bro. Parl. O.*, 349; *Mallon v. May*, 11 M. & W., 653; *Price v. Green*, 16 M. & W., 346; *Gaskell v. King*, 11 East, 185; *Nichols v. Stretton*, 10 Adol. & El. N. S., 346; *Ohester v. Freeland*, Ley R., 19; *Sheerman v. Thompson*, 14 Adol. & El., 1027.

The court further says, however, that the doctrine will not embrace cases where the objectionable stipulation is for the performance of an immoral or criminal act, for the reason that such an ingredient will taint the entire contract and render it unenforceable in all its parts.

This reservation in the doctrine that it will not apply when there are provisions in a contract which are immoral or criminal or malum in se, strips it of many objectionable features, and avoids a conflict with another well-established rule of law, that where there are a number of considerations and any one of them is illegal, the whole agreement is avoided.

It is true that the two rules often seem in conflict, and it will be found that the courts have not always clearly distinguished between them. A few authorities may be found, even, holding that the plaintiff, who made the legal and illegal promise, may sue upon the legal promise, where it has been performed, and the defendant has failed to perform his part of the contract. *King v. King*, 63 O. St., 363; *Rosenbaum v. U. S. & Co.*, 65 N. J. L., 255, 48 Atl., 235; *Fishel v. Gray*, 60 N. J. L., 5.

These authorities can only be sustained on the ground that the objectionable provisions in the contracts were not illegal, but simply void, and that being so, defendant had no right to rely upon them, and that they therefore had no effect upon the contract.

In *Higgins et al. v. Gager*, 47 S. W., 848, plaintiff made by parol a lease of a certain saloon to defendant for one year, and agreed not to sell cigars in his hotel for a period longer than one year. In consideration of these two promises defendant agreed to pay plaintiff \$55 per month for one year. The court held that while the parol lease for one year was valid, that plaintiff's promise not to sell cigars for a period longer than one year fell within that clause of the statute of frauds which prohibits any action upon any contract, promise, or agreement, that is not to be performed within one year from the making thereof, unless in writing. The court admitted that this part of its decision was in conflict with the decisions of other jurisdictions, citing *Doyle v. Dixon*, 97 Mass., 208. Holding then that this portion of plaintiff's promise was unenforceable, it then concluded that plaintiff had no right of action against defendant who had refused to perform his part of the contract. Here plaintiff had made two promises, one to lease land to defendant, which was valid, the other to refrain from selling cigars, which the court said was not enforceable. Because of the ineffectiveness of the one plaintiff could not sue the defendant, who in consideration thereof had made one valid promise. Had the parties to this action been reversed, the court would doubtless have held that he who made the single valid promise could have waived the unenforceable promise of the other party, and have sued upon that which was valid.

It is important to keep in mind the three classes of agreements which have already been

mentioned; agreements which are *malum in se* or such as are made void by statute or are criminal. Agreements which are simply illegal and void, and those which are neither illegal nor void but are only unenforceable.

Those of the first class when connected with valid promises forming the consideration for a contract make the whole contract void.

Those of the second class when thus united with valid promises may, when separable, be waived by the promisee and the valid enforced. But in this case he who has made both the legal and the illegal promise can not enforce the promise of the other party, because he can not make a valid offer to perform all his part of the contract. This is well illustrated by *Pettit's Admr. v. Pettit's Distributees*, 32 Ala., 288.

But those of the third class have no power or tendency to contaminate or to make void the valid agreements with which they are connected, and if they can be separated from them the latter will be readily enforced.

The most frequent illustration of the rule will be found in those cases involving agreements in restraint of trade. *Dean v. Emerson*, 102 Mass., 480; *Smith's Appeal*, 113 Pa. St., 579; *Thomas v. Miles*, 3 O. St., 274; *Mallan v. May*, 11 M. & W., 262.

These cases also well illustrate both sides of the question.

In the case of *Blshop v. Palmer et al.*, 146 Mass., 469, plaintiff's action was for damages on account of defendant's breach of an agreement wherein plaintiff had agreed for a certain amount to sell to defendant his business and had bound himself in the same contract not to enter or engage in said business anywhere for a period of five years. The court held that as the latter provision of the contract was an agreement against public policy, plaintiff could not enforce the promise of defendant to buy, and had no right of action against him for a breach of agreement; but conceded that if defendant had been willing to perform the contract and had sued plaintiff for its breach he might have recovered on that promise of plaintiff which was valid, waiving that which was invalid.

*Mallan v. May*, 11 M. & W., and *Green v. Price*, 13 M. & W., were cited to sustain this view. The former was a case concerning a contract between two physicians wherein the defendant agreed not to practice his profession in London nor in certain other named towns. Defendant had broken the contract by practicing both in London and the other towns during the stipulated period. Plaintiff sought to recover damages for the breach of the contract.

Defendant contended that since the covenant not to practice in the other named towns was held to be invalid as a restraint of trade, although the agreement to practice in London was valid, that the whole contract was void and neither promise could be enforced.

But the court held that the plaintiff had a good cause of action for defendant's breach of the valid stipulation.

The syllabus of *Green v. Price* gives accurately the point of the decision sustaining the same view, and is as follows:

"By deed reciting that A and B had carried on business as perfumers in copartnership, and

that it had been agreed between them that B in consideration of £2,100 should assign to A his moiety of the good will, stock, etc., of the copartnership. B, in consideration thereof, covenanted that he would not at any time during his life carry on the trade of a perfumer within the cities of London and Westminster, or within the distance of 600 miles from the same respectively; and for the observance of this covenant he bound himself in the sum of £5,000, by way of liquidated damages.

"Held: That this covenant was divisible and was good so far as it related to the cities of London and Westminster, though void as to the 600 miles; that a breach that defendant carried on the trade in the city of London was good; and that A was entitled to recover in respect to such breach the whole sum of £5,000."

The great weight of authority sustains the foregoing doctrine, which seems to be sound and logical if it be shown that plaintiff's portion of the contract is executed. If, however, one promise is illegal and void, though not *malum in se*, and is connected with another promise which is good, there then arises the problem whether the promisee can enforce the valid promise if his part of the contract is unexecuted. In most of the decided cases where the promisee was permitted to enforce the valid promise, he had already performed his part of the agreement. But should the question be raised in an action on a bilateral contract, the plaintiff seeking to enforce the valid and waive the illegal promise, it would seem in such case that he would fail to establish a contract, because of lack of consideration to bind defendant.

In such a contract it seems clear that the promisee is not bound, and that he who has promised to do the two things, one of which is illegal, can not compel the promisee to perform. It is well settled that if one party to a contract is not bound because of lack of consideration, neither is the other party bound. Both parties must be bound or neither is bound. There must be mutuality of promises. *Keep v. Goodrich*, 12 Johns (N. Y.), 397; *Buckingham v. Ludhern*, 40 N. J., 422.

Where the promise of one party is the consideration of the promise of the other, the promises must be concurrent and obligatory on both parties at the same time. *Tucker v. Woods*, 12 Johns, 190; *Keep and Hale v. Goodrich*, 12 Johns, 397; *Less v. Whitcomb*, 2 Mo. & P., 86.

The rule, then, which provides where there are two promises, one legal the other illegal, for one valid consideration, that the promisee may enforce the legal promise can only apply in those cases where the consideration is executed, and where, therefore, no question can arise as to a consideration for the promise sought to be enforced.

But it must be observed that this principle does not apply to promises which are unenforceable only, because they fall within the statute of frauds. Such promises are not only not illegal, but form a perfect contract, including the element of consideration, and it is immaterial in the discussion of this question whether they are executed or executory. They are not even void unless the statute so provides, and even if they

were, not being illegal, they would in no way taint or destroy valid promises with which they are joined. In *Rosenbaum v. U. S. Credit System Co.*, 65 N. J. L., 255; 48 Atl. Rep., 237, the court said:

"In most of the cases in which it has been held that if a promise forming part of the consideration of a contract is illegal, the whole consideration is void, it will be found that to do the thing promised was illegal or immoral."

The court asserts that the only case to be found which holds that where one promise is merely void and not illegal makes other promises invalid is *Bank v. Kink*, 44 N. Y., 187, and it is affirmed that the reasoning in that case is its own refutation. Other cases may be found wherein the doctrine is laid down that where one promise is void because it falls within the statute of frauds, other promises connected therewith thereby become void, though they would if standing alone be valid.

If the doctrine of *Pigot's* case be sound, if a promise which is illegal and therefore void, will not, when joined with a legal promise, prevent the enforcement of the latter, it is difficult to perceive the reason for holding that a promise which is perfectly good but merely unenforceable, because it falls within the statute of frauds, should prevent the enforcement of a distinct promise with which it is connected.

Yet it has been said in a number of cases that such a promise being void will invalidate others connected therewith. Thus in *Pond v. Sheehan*, 8 L. R. A., 414 (Ill.), the court concludes its opinion as follows:

"The contract . . . if void as to real estate must also be held void as to personal property."

*Myers v. Schemp*, 67 Ill., 469, is cited to support this proposition.

Turning to the latter case it will be found that the same doctrine is there laid down, and *Cook v. Tombs*, 2 Aust., 240, and *Lea v. Barber*, 2 Aust., 425, are cited as authority for the proposition.

These English cases to which this doctrine is traced were overruled in the latter case of *Wood v. Benson*, decided in the Court of Exchequer in 1831, where the point was distinctly made that part of the promise fell within the statute of frauds, and that therefore all was void. But the court held that a recovery could be had upon that promise which was not within the statute. Bayley, B., there said:

"I take it to be perfectly clear that an agreement may be void as to one part, and not of necessity void as to the other. It by no means follows that because you can not sustain a contract in whole, you can not sustain it in part."

In a number of cases where the actions were for specific performance, the rule is stated that where part of the agreements are void, all are void. This, of course, would be true in those actions brought to enforce specific performance of parol sale of land, with which were connected agreements to sell personal property. But in *Debeerski v. Paige*, 36 N. Y., 537, the court held that—

"If a part of an entire contract is void under the statute of frauds, the whole is void; a party will not be permitted to separate the parts of an entire agreement and recover on one part, the other being void."

An examination of this case will readily convince anyone that it is not in accord with the well-established doctrine stated above, which are supported by both reason and authority. Of this case that which was said of *Bank v. King*, 44 N. Y., 187, applies:

"The reasoning in the case is its own refutation."

It is in conflict with the rule in Ohio which supports the early doctrine in *Pigot's* case. *Lange v. Werke*, 2 O. St., 519; *Thomas v. Adm. of Miles*, 3 O. St., 274; *Widoe v. Webb*, 20 O. St., 435; *Ohio, ex rel., v. Board of Education*, 35 O. St., 519; *King v. King*, 63 O. St., 363.

Many recent cases establish a contrary doctrine which is now all but universal.

In *Rund et al. v. Mather*, 11 Cush., 1, where part of the promise fell within the statute of frauds and part did not, the court laid down this rule:

"If any part of an agreement is valid it will avail pro tanto, though another part of it may be prohibited by statute; provided the statute does not either expressly or by necessary implication render the whole void; and provided further, that the sound part can be separated from the unsound and be enforced without injustice to the defendant."

In *Henley v. Donovan*, 182 Mass., at page 68, the court says:

"Where the plaintiff has done work in consideration of the defendant's promise to do two things, the promise to do one being valid, the promise to do the other being within the statute of frauds, . . . the plaintiff can, if he chooses, forego all rights by reason of having been promised two things and enforce the performance of the one for which the promise is valid."

It is difficult to state any rule bearing upon this subject against which some authority may not be cited. But the following rules may be stated, being well supported by authority:

(a) Where two or more promises are made, part of which are legal and part illegal, in consideration of a legal promise, he who has made the legal promise may waive those promises which are illegal, and enforce those which are legal, provided his part of the contract has been performed; but if his promise is also executory the contract is bilateral, and being partly illegal can not be enforced by either party thereto.

(b) But the contract can not be enforced in any event by the party who made the illegal promise.

(c) If the illegal promise, so connected with a legal promise, is *malum in se*, or is a promise to perform a criminal act, the whole contract is void and unenforceable by either party thereto.

(d) But if the promise, so connected with a valid legal promise, is not illegal, but simply unenforceable, as one falling within the statute of frauds, it will not prevent the party who has made a legal promise on the other side, though it be executory, from waiving such unenforceable promise and enforcing the remaining promise.

Justice blanks of every description for sale at the Law Reporter Printing Co., 518 Fifth Street.



## Motor-Car Cases.

(The Justice of the Peace.)

The drivers of motor-cars continue to supply courts of summary jurisdiction with a large amount of work. We suppose that in course of time they will be taught to obey the law, but it seems to be a lesson which is very slow in being learned. Last year, at 69 J. P. 302, we reviewed the decisions in the high court cases which had been reported up to that time. We propose now to consider those which have been given since that date.

In the case of *R. v. Chancellor and Another*, J. J.; *Ex parte Hassall*, 69 J. P., 383, a motion for a certiorari to quash a conviction under section 1 (3) of the Motor-Car act, 1903, was successful. That subsection provides that if the driver of a car commits an offense under the section and refuses his name, the owner of the car, if required, must give any information in his power which may lead to the identification and apprehension of the driver. If the owner refuses he is guilty of an offense. In this case the owner had been asked to give the name of the driver of his car, stating that proceedings would be taken against the driver "for exceeding the legal limit of speed." He had neglected to do so, and the justices convicted. A divisional court quashed the conviction on the ground that the offense alleged against the driver was not one under section 1 of the act, to which alone subsection (3) of section 1 was applicable, but was an offense under section 9, as that was the section which provided for a legal limit of speed and made it an offense to exceed it. The conviction, if it were to stand, ought to have alleged that an offense had been committed by the driver under section 1 of the act. In so deciding the court followed the reasoning laid down in *R. v. Hankey and Another*, J. J. (1905), 2 K. B., 687; 69 J. P., 219, referred to in our previous article, but the judges evidently thought that in the interests of the public it would have been better if they could have decided in the opposite way. Subsection (3), however, provided a special remedy for offenses under section 1 and could not be extended to other sections and offenses.

The cases of *Hargreaves v. Baldwin*, 69 J. P., 397, and *Elwes v. Hopkins* (1906), 2 K. B., 1; 70 J. P., 262, both raised questions as to the admissibility of evidence on the hearing of charges under subsection (1) of section 1 of the Motor-Car Act, 1903. That section provides that "if any person drives a motor-car on a public highway recklessly or negligently, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the highway, and to the amount of traffic which actually is at the time, or which might reasonably be expected to be, on the highway, that person shall be guilty of an offense under this act." It will be seen that there are four separate offenses alleged, although in practice it is somewhat difficult to distinguish between them.

In *Hargreaves v. Baldwin* (supra), the defendant was charged with the fourth of these offenses, namely, driving the car on a highway "in a manner which was dangerous to the public, having regard to all the circum-

stances of the case." The justices convicted, and on an appeal to quarter sessions that court affirmed the conviction, but stated a case. The evidence was to the effect that there were several cyclists on the road and a cart. One of the former, in trying to get out of the way, was injured. The car was going at a speed of not less than 20 miles an hour. The contention of the appellants was that evidence of excessive speed was not admissible, because the same section made it a separate offense to drive "at a speed which is dangerous to the public." It had been held in *R. v. Wells*, 68 J. P., 392, that these were separate offenses. The divisional court did not approve of this highly technical defense and dismissed the appeal. Had they held otherwise, it would have made the section quite unworkable. They held, however, that speed is an element of danger and that evidence as to speed can be taken into consideration when the charge is one of driving in a manner dangerous to the public. They also held that, apart from speed, there was evidence that the defendant had driven in a manner dangerous to the public as they had neglected to slow up so as to allow the cyclist who was injured to get in front of the cart.

In the other case under section 1—*Elwes v. Hopkins* (supra)—the driver of a motor-car was charged with driving it on a public highway "at a speed which was dangerous to the public, having regard to all the circumstances of the case." The justices at petty sessions had convicted and quarter sessions had affirmed the conviction, but stated a case. The evidence for the prosecution showed that the appellant had driven the motor-car at a speed of 20 miles an hour or over down the promenade at Cheltenham during the afternoon. There was little vehicular traffic on the highway at the time, which was unusual, as the promenade was more used than any other highway in Cheltenham. It appeared that no person was in fact in danger, owing to the driving of the motor-car by the appellant.

Among the "circumstances of the case" mentioned in section 1 (1) of the Motor-Car Act, 1903, to which justices must have regard, is the "amount of traffic which might reasonably be expected to be on the highway." The justices, therefore, very properly admitted evidence as to what was the usual amount of traffic on this highway. On appeal objection was taken to the admission of this evidence before the quarter sessions, because it was said that there ought to have been inserted in the conviction by the justices words showing that the defendant had been convicted for driving at such a speed as was dangerous to the public, having regard to all the circumstances of the case, including "the traffic, which might reasonably be expected to be on the highway." The court was clearly of opinion that the evidence was admissible under the words "having regard to all the circumstances of the case," which were the words used in the conviction. This case seems a fair sample of how the ingenuity of counsel is taxed to find technical defenses for persons who are anxious to escape from the consequences of their own thoughtless driving.

In *Plancoq v. Marks*, 70 J. P., 216, it was decided that the result of a calculation of the

speed of a motor-car, by finding by means of a stop-watch the time it occupied in passing over a given distance, was not evidence of opinion, but evidence of fact and did not require independent corroboration. This was a point under section 9 of the Motor-Car Act, 1903, about which there has been some doubt. That section, which limits the speed of motor-cars, contains this proviso, that "a person shall not be convicted under this provision for exceeding the limit of speed of twenty miles merely on the opinion of one witness." It was contended that where a constable, with the assistance of another, took the time of a motor-car by means of a stop-watch, and so calculated the speed, he was merely giving his opinion as to the speed, although based on the result of the stop-watch. The divisional court did not accept this view. The evidence as to the time occupied in going over a given distance and the method employed to ascertain that time are evidence of fact and not of opinion. The object of the proviso was to prevent a person from being convicted on the mere opinion of one person as to the rate of speed.

The case of *Beresford v. St. Albans J. J.*, 22 T. L. R., 1, disposed of two other technical defenses to proceedings under section 9 for driving at an excessive speed. It appeared that two constables were stationed at the seventh mile-stone from St. Albans and two at the third mile-stone, being four miles apart. The car was timed to have done the four miles at a rate of 28 miles an hour. At the latter mile-stone the car was stopped. The defendant, the owner of the car, was then driving it and the chaffeur was sitting beside him. The owner had a license. It was not seriously disputed that the car had been driven at an excessive speed, but it was contended that this was not evidence that the defendant had driven the car over the whole distance, as the chaffeur might have done so. The justices, however, convicted, and the high court thought that the fact that the defendant was driving at the third mile-stone was some evidence that he had driven it all the way. It was evidence which could have been rebutted, but the defendant did not go into the witness box to rebut it, so the justices were entitled to act upon it.

Another point raised in the case was that the notice to prosecute under section 9 (2) of the act was insufficient, inasmuch as it alleged the offense to have been committed between Markyate and St. Albans, two places which were between 10 and 20 miles apart. The court, however, thought that there was nothing in this to mislead the defendant, or cause him to be taken by surprise, and therefore they held the notice to be sufficient, but it was a question of degree in each case.

A recent case of *R. v. Mortimer*, of which a note appears ante, p. 340, raised a point of practice rather than of law. A motor-car driver had been fined 10*l.* and costs for driving to the danger of the public, and the justices had refused to give him time to pay, and as he seemed to have no sufficient goods on which to levy a distress he was sent to prison. An application was made for a writ of habeas corpus, but on the return to the writ the divisional court were of opinion that the justices had acted rightly, and

that there was nothing to displace the finding that there were no sufficient goods.

These cases seem to indicate that sections 1 and 9 of the act have been carefully drawn and to have left very little opening for defenses of a technical nature.

In addition to cases under the Motor-Car Acts, the drivers of cars have supplied the courts with a number of accidents for damages for injuries occasioned to persons on the roads. On an application for a new trial in one such case—*Norton v. Bailey*, Times, 14th July, 1906—the Lord Chancellor gave utterance to a dictum which motorists would do well to remember. He said: "That when people were driving motor-cars or other vehicles on a public highway they had a duty to remember that deaf persons, and blind persons, and nervous persons, and children, and decrepit old persons, were just as much entitled to use the public highway as they were. And if anybody thought proper so to drive that there was a chance of serious consequences from a mistake of judgment or a miscalculation on the part of the driver and those consequences were not averted, he would have to pay for it in damages."

#### Libel by Praise.

[New York Law Journal.]

The decision of the Supreme Court of Louisiana, in *Martin v. The Picayune* (40 So., 376), has been the subject of considerable comment in different publications, secular as well as legal, since it was handed down in January last. The disposition has been to state the position taken by the court more broadly than the report of the case warrants. For example, a legal contemporary has this notice in a recent number:

"A very remarkable determination as to what constitutes a libelous publication is contained in the case of *Martin v. Picayune*, decided by the Supreme Court of Louisiana (40 So. Rep., 376). The plaintiff was a physician of high standing in his profession and a member of a medical society the members of which were opposed to advertising by physicians and had adopted resolutions condemning the practice. The defendant newspaper, obtaining information that a remarkable cure had been effected by the professional skill of the plaintiff, published a rather glowing account of the case, stating that other physicians had treated the patient without effect and containing various other laudatory remarks. It was alleged by the plaintiff that this publication, which, although true and obtained from the father of the patient, had not been authorized by the plaintiff, had a tendency to lead the public and his brother practitioners to believe that he was advertising, and thereby caused them to class him in the category of quacks, who alone, it was alleged, resorted to advertising. The trial court held that the complaint stated no cause of action, but this ruling is reversed by the Supreme Court, which declares that the complaint charged is an actionable libel. Under such circumstances, the truth of the matter published is not a defense."

Several elements of fact and law should be added in order adequately to apprehend the

court's position: (a) The plaintiff had called upon the representative of the defendant newspaper and handed him a copy of the resolutions of the Medical Society against advertising, and explained why it was that regular practitioners did not resort to the practice. (b) The decision was made under the Civil Code of Louisiana (art. 2315), providing that "Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it." The court says that this provision is based upon a precept in the Institutes of Justinian. The decision, therefore, may be regarded as one under the civil law and not under the common law system. (c) The court expressly said that the right of privacy, and its extent, were involved. (d) The decision was analagous to one made on demurrer, holding merely that the exception of no cause of action should have been overruled, and that the cause should be heard on the merits.

As a common-law question, we do not believe that the publication of a bona fide article in praise of a man, either in his personal or professional capacity, can be held to be libelous. Of course, it might be different as to a so-called reading notice to which was added, either intentionally or inadvertently, "Advt." And a substantial equivalent of this might be the insertion of a "puff" in the advertising columns, or otherwise, so as reasonably to convey the impression that it was paid for or otherwise procured to be published by its subject. If any right be infringed by a genuine commendatory article it would be the right of privacy, and even where that right has been upheld, as, for example, in Georgia, we do not believe it would be carried to the extent of entailing liability for a single or a limited number of publications in which a person's achievements were praised, treating them as a subject of general interest. The right of privacy will usually be protected by injunction, in the granting of which a large measure of judicial discretion will be exercised.

A case having somewhat similar features arose some years ago in England. *Dockrell v. Dougall*, 78 Law Rev. Rep., 840. "The plaintiff was a physician, the defendant the owner of a medicine called Sallyco. In an advertisement of his medicine the defendant published of the plaintiff, with substantial proof, but without authorization: 'Dr. Morgan Dockrell, physician to St. John's Hospital, London, is prescribing Sallyco as an habitual drink. Dr. Dockrell says nothing has done his gout so much good.' For this the plaintiff brought an action, but the suit was dismissed upon the ground that there was no injury to the plaintiff's property or reputation." In that case the jury found upon a submission of the question to them that the matter complained of was not libelous, and indeed, in most of the discussions that came to our notice, the question involved was treated as one not of defamation but of the right of privacy. See *Harvard Law Review* for November, 1898 (Notes).

Under the actual circumstances disclosed in the Louisiana case, and particularly if the plaintiff had previously called upon a newspaper's representative and in effect requested that no notices of plaintiff's professional work be published because they might be miscon-

strued as advertisements, it may be that some courts would hold a laudatory publication libelous, but we regard the contingency as extremely doubtful.

#### Carriers—Duty to Person Aiding Passenger to Board Train.

In *Southern Ry. v. Patterson*, decided by the Supreme Court of Alabama, in June, 1906 (41 So. Rep., 964), it was held that where one boards a train solely for the purpose of assisting an old lady, nearly blind, at her request, to take passage on it, before doing so having approached the conductor and told him of her condition and need of assistance, and been requested by the conductor to render such assistance, so that the conductor is bound to know of the intention to alight before the train starts, it is the duty of the conductor to afford a reasonable time to alight before starting the train; and not having done so, and such person having in consequence been injured in alighting, without any contributory negligence, after the starting of the train, the carrier is liable therefor. The court said in part:

"Mr. Elliott in his work, cited above (4 Elliott on Railroads, sec. 1578, p. 2458), says: 'There is some diversity of opinion as to whether one who enters a train for the purpose of assisting a passenger is to be regarded as a passenger, and there are cases which seem to hold that such a person is a passenger. We are unable to assent to this doctrine as broadly held by some of the cases, for it seems to us that the extraordinary duty of a carrier to passenger is not, as a general rule, owing to such a person, although we have no doubt that the railroad company owes to him the duty of exercising ordinary or measurable care. There may probably be cases where a person assists a passenger on a train, as, for instance, where the passenger is ill, feeble, too young to care for himself, or the like, where it is proper to hold that the person needing the assistance is a passenger, but where there is no reason for rendering assistance the person giving it can not, as we believe, be regarded as a passenger.' We think the distinction here pointed out by the learned author is well taken. The illustration given by him of the condition of the person taking passage rendering it necessary to have an assistant to help him safely board or get off the train, brings such an assistant, rendering the requisite service, within the category with respect to the duty owing by the carrier of a passenger, and where injury is suffered by such an assistant at the hands of the carrier in performing the service assumed by him, whether assumed at the instance of the passenger or the servant of the carrier whose duty it was to render it, in the absence of all explanation, the law presumes it was the result of the carrier's fault, and casts upon the latter the burden of overturning the presumption, or of showing that diligence and a careful observance of duty could not have prevented the injury.

"We fully concur in the view that the duty of the conductor not to start the train never arose in this case unless he knew or ought to have known that the plaintiff's sole purpose in going on it was to assist the lady to a seat. But

we think the circumstances shown were such as to afford the reasonable inference that he did know or ought to have known that plaintiff boarded the train solely for that purpose. It is reasonable to suppose that plaintiff would not have approached him and made known the infirmity of the old woman if he intended to take passage himself. Had he intended to do so it is more than probable he would have assisted the woman to board the train and to a seat without making known her condition and need of assistance to that servant of the defendant *L. & N. R. R. v. Orunk*, 119 Ind., 542; *Galloway v. O., R. I. & P. Ry.*, 87 Iowa, 458.

"Nor can it be affirmed, as a matter of law, that plaintiff's alighting from the train while moving, under the circumstances shown, was an act of negligence which would defeat his recovery. Whether it was or not was a question for the jury. *Central Rail & Banking Co. v. Miles*, 88 Ala., 256, 6 South., 696; *North B'ham St. Ry. v. Calderwood*, 89 Ala., 247, 7 South., 380, 18 Am. St. Rep., 105; *Montgomery & Eufaula R. R. v. Stewart*, 91 Ala., 421, 424, 8 South., 708; *Watkins v. Birmingham Ry. & Elec. Co.*, 120 Ala., 147, 152, 24 South., 392, 43 L. R. A., 297, and authorities there cited. There was clearly no duty on plaintiff to request the conductor to stop the train, after it started, for him to alight (*Miles' case*, supra). He had the right to get off, and if injured in doing so he may recover if the conductor knew or ought to have known what his purpose was in boarding it, there being no dispute but that he was diligent in the service he was rendering, and in getting off he did no more than a prudent and careful man would have done. And the breach of duty owing to him by the conductor in starting the train without giving him a reasonable opportunity to alight was clearly the proximate cause of his injury, just as much so as was the breach of duty the proximate cause of the injury recovered for in the case of *Central R. R. & Banking Co. v. Miles* and other cases cited by us of a similar nature."

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Constitutionality of "Sales in Bulk" Statutes.  
[New York Law Journal.]

The recent decision of the Supreme Court of Michigan, in *Spurr v. Travis*, 108 N. W., 1090, is notable as adding the determination of another State court of last resort to the preponderating weight of authority that "Sales in Bulk" statutes are constitutional and valid. The court specifically held that Const. U. S. Amend. 14, sec. 1, prohibiting a State from abridging the privileges or immunities of citizens of the United States, or denying to any person within its jurisdiction the equal protection of the laws, is not contravened by Pub. Acts 1905, page 322, No. 223 of Michigan, declaring void as against creditors a sale in bulk of a stock of merchandise, except on compliance with certain conditions, the act being equally applicable to residents and non-residents.

It was also held that such statute is not open to the objection of being class legislation, because not including merchants not having creditors or because limited to merchants and not including persons of other callings, and further that the operation of the act would not deprive persons of property without due process of law,

but would amount to proper exercise of the police power.

It is to be noted that this statute makes a sale in bulk of a stock of merchandise void unless the conditions prescribed shall have been complied with. In this respect the Michigan law is the same as that of New York, declared unconstitutional in *Wright v. Hart* (182 N. Y., 330). In commenting upon the latter decision (N. Y. Law Journal, October 18, 1906), we called attention to the fact that the dissenting justices in the Court of Appeals pointedly referred to the amendment of the New York Law by chapter 569, L. 1904, according to which a sale without complying with the statute would only be presumed to be fraudulent and void instead of being absolutely void, saying that they greatly preferred "the amended act to the original, because, although effective, it is not so harsh." In his dissenting opinion, however, Judge Vann remarked that the consideration in question "has nothing to do with the validity of either act." The Supreme Court of Michigan concurs with the dissenting judges of the New York Court of Appeals in such view.

In our former editorial we said that the majority of the court probably were justified in holding that the New York statute might deprive persons of liberty and property without due process of law because it was unnecessarily and unreasonably harsh in various particulars, and, moreover, was quite indefinite in certain of its terms. This might be conceded without denying the power of a legislature to pass a "Sales in Bulk" act imposing conditions serious enough to be a protection against fraud and not so stringent as to amount to oppression.

A majority of the New York Court of Appeals went further and held that the "Sales in Bulk" act amounted to class legislation. We expressed our dissent from this view and quoted the very cogent language of Chief Justice Cullen on this point (182 N. Y., 359). It may be profitable to add what the Supreme Court of Michigan in a unanimous opinion has to say on the same point:

"It is contended that the act is class legislation for two reasons: First, because it limits its operation to merchants and does not include farmers, manufacturers, etc.; and, second, that it does not relate to merchants who owe no debts. A sufficient reason for not including within its provisions merchants who owe no debts is found in the apparent purpose of the act, which is to protect creditors. If there be no creditor, there is no one requiring protection. It would be a novel application of the doctrine which forbids class legislation to hold that creditors of such merchants as have creditors may not be protected by regulation of transfers by such merchants because the provisions can not properly be made applicable to others having no creditors. Nor is it class legislation within the meaning of this term as used to express an unconstitutional exercise of power to limit the application of the act to a particular calling or relation. *People, &c., v. Bellet*, 99 Mich., 151, 57 N. W., 1094, 22 L. R. A., 696, 41 Am. St. Rep., 589. In *Cooley on Constitutional Limitations* (p. 554, 7th ed.) it is said: 'Laws public in their objects may, unless ex-

press constitutional provision forbids, be either general or local in their application. They may embrace many subjects or one, and they may extend to all citizens or be confined to particular classes, as minors or married women, bankers or traders, and the like. . . . If the laws be otherwise unobjectionable, all that can be required in these cases is that they be general in their application to the class or locality to which they apply; and they are then public in character and of their propriety and policy the legislature must judge' See, also, *McDaniels v. Connelly Shoe Co.*, 30 Wash., 549, 71 Pac., 37, 60 L. R. A., 947, 94 Am. St. Rep., 889. It is easy to discover reasons for apprehending and guarding against fraudulent disposition of stocks of merchandise by debtor owners which would not relate to other species of property. As was said in the case cited above, 'it is well known that the business of retailing goods, wares, and merchandise is conducted largely upon credit, and furnishes an opportunity for the commission of frauds upon creditors not usual in other classes of business.' The act is not class legislation. See, also, *Ripley v. Evans*, 87 Mich., 217, 231, 49 N. W., 504; *Building & Loan Ass'n v. Billing*, 104 Mich., 186, 62 N. W., 373."

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**Warehousemen—Liability for Loss—Condition in Receipt.**

In *Gannon v. Seehorn*, decided by the Supreme Court of Washington, in September, 1906 (86 Pac. Rep., 1116), it was held that a warehouseman is liable for the value of a box lost while stored with him, notwithstanding a provision in the receipt that he should be liable for no more than \$25 for the loss of a box unless its true value is therein stated, and though no value was stated in the receipt, the value of the box with the name of the bailor being written on a card attached to the outside of the box, and it having been the duty of the warehouseman to incorporate the value in the receipt.

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**Master and Servant—Obvious Danger.**—The danger of an employee receiving an electric shock while clearing snow from an elevated railroad track held not an obvious danger. *Smith v. Manhattan Ry. Co.*, 98 N. Y. Supp., 1.

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**New Law Books.**

**A TREATISE ON THE LAW OF CARRIERS** as administered by the courts of the United States, Canada, and England, covering the Principles and Rules applicable to Carriers of Goods, Passengers, Live Stock, Common Carriers, Connecting Carriers, and Interstate Transportation, and the Methods and Procedure for their Enforcement, furnishing a practical guide to litigants in the jurisdictions named and containing the Railroad Rate Act of 1906. By DeWitt O. Moore, of the Johnstown, N. Y., Bar. Albany: Matthew Bender & Co.

The author of this work is well and favorably known to the profession by his connection with Nellis' "Street Railroad Accident Law," pub-

lished in 1904, and which has received general commendation.

The present work is most timely. Questions concerning the rights, duties, and liabilities of common carriers in their relations to shippers and passengers, and their regulation by statutory enactment, have been the subject of widespread discussion, and litigation over questions arising out of such relations is constantly increasing. The value to the profession of a work giving a clear statement of the established rules and principles governing the varied phases of this class of litigation can hardly be overestimated. Such a work the author has given us in the present volume.

A chapter is devoted to the subject of interstate transportation, and the decisions of the courts upon the principal questions arising in the administration of the Interstate Commerce Act of 1887, and amendments thereto are given. These decisions doubtless forecast to a considerable extent the probable construction that will be given by the courts to many provisions of the Railroad Rate Act passed at the last session of Congress. The full text of the latter act is also given, together with a statement of the principal purposes and objects of the law.

The labor incident to the preparation of such a work as this is necessarily great. An examination of the present volume shows that it has been carefully and conscientiously done, resulting in a work of exceptional merit.

**HAND-BOOK OF CORPORATION LAW AS APPLIED TO PRIVATE BUSINESS CORPORATIONS.** By Richard Selden Harvey of the New York Bar. The Bleyer Law Publishing Company, New York. Price, \$6.

Lawyers and others having to do with private business corporations will find this work most helpful. It is, as its title indicates, a hand-book of corporation law as applied to private business corporations. The aim of the author has been to state the correct rule in relation to the subjects discussed as developed by a careful and thorough research into the text-books and decided cases. The definitions of private business corporations and the relation to component members are discussed in the chapter I, and subsequent chapters deal with the questions of situs; foreign corporations and comity; rights and powers; alienation of corporate property and rights; bonds and mortgages; duties, obligations, and liabilities of corporations; the charter; by-laws; stock and stock certificates; changes of capital stock; stockholders' meetings; directors, officers, and agents; stockholders' inter sese; the fiduciary relation; inspection of books and papers; enumeration of stockholders' rights and wrongs; ratifications, acquiescence, laches, and estoppel; remedies for stockholders' wrongs; amalgamation, combination, consolidation, and merger; conspiracy; holding companies; corporations as affected by constitutional provisions; termination of corporate existence. From the above enumeration it will be seen that the subjects treated and many of them of great practical interest and importance. The author expresses himself clearly and forcibly on the subject of corporate abuses, and points out the remedies therefor.

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## RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

## Legal Notices.

### FIRST INSERTION.

**Wm. A. McKenney, Attorney**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Eleanor A. H. Magruder, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscriber, on or before the 25th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of October, 1906. **AMERICAN SECURITY AND TRUST COMPANY**, by James F. Hood, Secretary. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,886. Administration. [Seal.] 44-81

**Barnard & Johnson, Solicitors**

In the Supreme Court of the District of Columbia.  
**Jennie R. Wyloughby**, Complainant, v. **Edgewood Syndicate et al.**, Defendants.  
No. 24,343, in Equity. Docket 54.

Guy H. Johnson and R. Preston Shealey, trustees, having reported to the court the sale to William M. Mooney of lots numbered one (1) to twenty-five (25), both inclusive, being all of square numbered two (2) in the subdivision known as "Edgewood," in the District of Columbia, as per plat in liber co No. 7, at folios 98 and 99, of the surveyor's office for said District, containing about 100,000 square feet of ground, more or less, for the price of nine (9) cents per square foot, payable all cash, or subject to a deed of trust for four thousand dollars (\$4,000) and the balance cash. It is, this first day of November, A. D. 1906, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 3d day of December. Provided a copy of this order be published once a week for three (3) successive weeks before said last-mentioned day in The

[Seal.] Washington Law Reporter and Evening Star.  
**HARRY M. CLABAUGH**, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. 44-81

## Legal Notices.

[Filed November 1, 1906.]

**A. Leftwich Sinclair, Attorney**

In the Supreme Court of the District of Columbia, Holding a Special Term as a District Court of the United States for the District of Columbia.

In the Matter of the Payment of Damages Resulting to Adjacent Property From Changes in the Grades of Streets, Avenues, and Alleys Authorized by the Act of Congress Approved February 28, 1903, Relating to the Construction of a Union Railroad Station in the District of Columbia.

District Court No. 871.

Notice is hereby given that we, the undersigned, having been designated and appointed by the Supreme Court of the District of Columbia, holding a special term as a United States District Court for the District of Columbia, as a commission to appraise the damages resulting to adjacent property from changes in the grades of streets, avenues, and alleys authorized by the act of Congress approved February 28, 1903, relating to the construction of a union railroad station in the District of Columbia, will meet at 10 30 o'clock A. M., on Wednesday, the 12th day of December, A. D. 1906, at the United States Court House (City Hall), in the District of Columbia, in a room to be assigned us by the United States Marshal for said District, for the purpose of viewing the property affected by the changes of the grades of the following-named streets, avenues, and alleys, and hearing testimony touching the damages resulting to real property from said changes of grade, in accordance with the terms and provisions of the act of Congress approved April 22, 1904, entitled "An act to provide for payment of damages on account of changes due to construction of the Union Station, District of Columbia," to wit: Second street northeast, Third street northeast, and K street northeast, around square numbered seven hundred and fifty (750), and the alleys and minor street (Parker street) in said square; Delaware avenue and Second street northeast, around square numbered seven hundred and forty-eight (748); and Third street northeast, between L and M streets. All owners of real property damaged by the changes in the grades of said streets, avenues, or alleys will file a petition with us, in this cause, signed and sworn to, for an allowance of damages within sixty (60) days after the said 12th day of December, A. D. 1906. The aforesaid act of Congress approved April 22, 1904, provides that upon the failure of any such owner to thus present his claim, within said period, his right to do so shall cease and determine. **CHARLES A. BAKER, GEORGE W. MOSS, GEORGE [Seal] SPANSKY**, Commission to Appraise Damages. A true copy. Test: J. R. YOUNG, Clerk, by T. E. Cunningham, Asst. Clerk. nov. 2, 9, 16, 23, 30; dec. 7.

**Wm. A. McKenney, Attorney**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Willie Jane Bestor, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 29th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 31st day of October, 1906. **AMERICAN SECURITY AND TRUST CO.**, by James F. Hood, Secretary; **NORMAN BESTOR**, The Woodley, Wash., D. C. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,888. Administration. [Seal.] 44-81

**Howard Boyd, Attorney**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Katherine Kirby, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of November, 1906. **MARY F. HEIDE**, 512 7th st. S. E. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,878. Administration. [Seal.] 44-81

**Legal Notices.****J. B. Horgan, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Thomas Yates, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 29th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of October, 1906. JAMES B. HORGAN, 452 D St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,902. Administration. [Seal.] 44-St

**Conrad H. Syme, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Joseph Henry Krull, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of October, 1906. HONORA KRULL, 1245 5th St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,974. Administration. [Seal.] 44-St

**W. H. Sholes, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Lewis E. Duvall, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of October, 1906. ELLEN C. DUVALL, 474 E St. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,989. Administration. [Seal.] 44-St

**Arthur Peter, Attorney****In the Supreme Court of the District of Columbia.  
Katherine W. Guy vs. Dan Dorsey Guy and Ann Allen,  
alias Nan Allen.**

No. 26,538. Equity Doc. —.

The object of this suit is to obtain an absolute divorce upon the ground of adultery. On motion of the complainant, it is, this 24th day of October, 1906, ordered that the defendant, Ann Allen, alias Nan Allen, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post before said day. HARRY M. CLA-

BAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 44-St

**Wm. A. McKenney, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John H. Elliott, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of October, 1906. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,438. Administration. [Seal.] 44-St

**Legal Notices.****S. Herbert Giesy, Solicitor**

**In the Supreme Court of the District of Columbia.  
Bertha O. Wilcox, Plaintiff, vs. Samuel D. Crutenden,  
Henry E. Stone, Nellie Field, et vir; Edward E.  
Field, Sarah Hull, Edward A. Chittenden, Jean-  
nette Crutenden, Benjamin Rossiter, John Ross-  
iter, Adeline Rossiter, Francis Rossiter, Anna  
Rossiter, Lois E. Foote, Mary E. Newton, et vir;  
Arthur S. Newton, Duane J. Kelsey, Ida B. Bill-  
man, et vir; Ira Billman, Gertrude E. Stevens, et  
vir; A. B. Stevens, Martha L. Coward, Curtiss Wil-  
cox, Kate Wilson, Curtiss A. Hall, Defendants.**

In Equity. No. 23,605. Doc. 60.

The object of this suit is to sell lot eight (8), in square four hundred and three (403), improved by houses 303 and 303 K street N. W., Washington, D. C., and from the proceeds to pay the creditors of August C. Wilcox, deceased, their claims and his widow an allowance in lieu of dower, and the tenants in common of the heirs of said Wilcox their respective proportions of such proceeds. On motion of the complainant, it is, this 29th day of October, A. D. 1906, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order in The Washington Post and The Law Reporter; otherwise the cause will be proceeded with as [Seal] in case of default. By the Court: ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by R. P. Belew, Asst. Clerk. 44-St

**E. H. Thomas and Jas. Nances Smith, Attorneys****In the Supreme Court of the District of Columbia,  
Holding a District Court.****In Re The Opening of an Alley in Washington Heights  
and Widow's Mite, in the District of Columbia.  
District Court, No. 603.**

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of an act of Congress approved February 23, 1905, entitled "An Act to amend chapter fifty-five of an act to establish a Code of law for the District of Columbia," have filed a petition in this court praying the condemnation of land necessary for the opening of an alley in the square bounded by Wyoming avenue, Connecticut avenue, California avenue, and Twenty-third (23d) street in said Washington Heights and Widow's Mite, in the District of Columbia, as shown on a plat or map filed with the said petition, as part thereof, and praying also, that a jury of five judicious, disinterested men, not related to any person interested in these proceedings and not in the service or employment of the District of Columbia or of the United States be summoned by the United States Marshal for the District of Columbia to assess the damages each owner of land taken may sustain by reason of the opening of the aforesaid alley and the condemnation of the land necessary for the purpose thereof and to assess the benefits resulting therefrom, including the expenses of these proceedings, as provided in and by the aforesaid act of Congress. It is, by the court, this 28th day of October, A. D. 1906, ordered that all persons having any interest in these proceedings be, and they are hereby, warned and commanded to appear in this court on or before the 15th day of November, A. D. 1906, and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be empaneled and sworn herein. And it is further ordered that a copy of this notice and order be published once in The Washington Law Reporter and once in The Washington Evening Star, The Washington Post, and The Washington Times, newspapers published in the said District, at least ten days before the said 15th day of November, A. D. 1906. It is further ordered that a copy of this notice and order be served by the United States Marshal for the said District, or his deputies, upon such owners of the fee of the land to be condemned herein, as may be found by the said marshal or his deputies within the District of Columbia, before the said 15th day of November, A. D. 1906. By the [Seal] Court: JOSEPH BAENAED, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 44-11

New corporations can procure from the Law Reporter Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated, numbered, and bound.



**Legal Notices.****Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscribers, who were by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Robert E. Sullivan, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 26th day of November, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 30th day of October, 1906. DENNIS J. O'LEARY, JOHN D. COUGHLAN. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,137. Administration. [Seal.] 44-3t

**John B. Lerner, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Adolphe Berger, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 19th day of November, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 30th day of October, 1906. THE WASHINGTON LOAN AND TRUST COMPANY, by Frederick Elcheberger, Trust Officer, by John B. Lerner, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,228. Administration. [Seal.] 44-3t

**SECOND INSERTION.****William K. Quinter, Worthington, Heald & Fralley,  
Attorneys****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the State of Michigan, has obtained from the Probate Court of the District of Columbia ancillary letters of administration on the estate of Henry W. Seymour, late of Saute Ste. Marie, Michigan, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscriber, on or before the 20th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of October, 1906. HARRIET G. SEYMOUR, 1917 Kalorama Road. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,863. Admn. [Seal.] 43-3t

**Grothwaite & Colladay and Harry F. Lerch, Solicitors  
In the Supreme Court of the District of Columbia,**

Thomas O'Neill, Trading as O'Neill & Company, Plaintiff, v. Helen B. Ferrill, Otherwise Known as Helen B. Gilbertson, Defendant.

At Law, No. 48,318.

The object of this suit is to recover the sum of \$481.53, with interest, according to the particulars of demand attached to the declaration herein, due the plaintiff from the defendant, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 18th day of October, 1906, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day. By the Court: WRIGHT, Justice.

A true copy. Test: J. R. Young, Clerk, by Alf. G. Buhrman, Asst. Clerk. 43-3t

**Legal Notices.****Jas. D. Sullivan, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of William J. Harrington, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 25th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of October, 1906. PATRICK F. HARRINGTON, 2330 Brightwood ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,933. Administration. [Seal.] 43-3t

[Filed October 22, 1906.]

**A. Leftwich Sinclair, Attorney  
In the Supreme Court of the District of Columbia,  
Holding a Special Term as a District Court of the United  
States for the District of Columbia.**

In the Matter of the Payment of Damages Resulting to Adjacent Property from Changes in the Grade of Streets, Avenues, and Alleys Authorized by the Act of Congress Approved February 12, 1901, Relative to the Elimination of Grade Crossings on the Line of the Baltimore and Potomac Railroad Company, in the District of Columbia. District Court. No. 671.

Notice is hereby given that we, the undersigned, having been designated and appointed by the Supreme Court of the District of Columbia, holding a special term as a United States District Court for the District of Columbia, as a commission to appraise the damages resulting to adjacent property from changes of the grades of streets, avenues, and alleys authorized by the act of Congress approved February 12, 1901, relative to the elimination of grade crossings on the line of the Baltimore and Potomac Railroad Company in the District of Columbia, will meet at 10.30 o'clock A. M., on Friday, the 30th day of November, A. D. 1906, at the United States Court House (City Hall), in said District, in a room to be assigned us by the United States Marshal for said District, for the purpose of viewing the property affected by the changes in the grades of the following-named streets, and hearing testimony touching the damages resulting to real property from said changes of grades, pursuant to the terms and provisions of an act of Congress approved June 29, 1906, entitled "An act to provide for payment of damages on account of changes of grade due to the elimination of grade crossings on the line of the Philadelphia, Baltimore and Washington Railroad Company," to wit: I street S. E., between 5th street and Virginia avenue; I street S. E., between 6th and 7th streets; K street S. E., between 6th and 7th streets; K street S. E., between 7th street and Virginia avenue; 6th street S. E., between G and I streets; 6th street S. E., between Virginia avenue and K street; Virginia avenue S. E., between 6th and 7th streets; Virginia avenue S. E., between 6th and 7th streets; Virginia avenue S. E., between 7th and 8th streets; Virginia avenue S. E., between 2d and 3d streets; H street S. E., between 1st and 2d streets. All owners of real property damaged by the changes in the grades of said streets will file a petition with us, in this cause, signed and sworn to, for an allowance of damages, within twelve months after the said 30th day of November, A. D. 1906. The aforesaid act of Congress approved June 29, 1906, provides that upon the failure of any such owner to thus present his claim within said period, his right to do so shall cease and determine. CHARLES A. BAKER, GEORGE W. MOSS, GEORGE SPRANSEN, Commission to Appraise Damages. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 43-3t

oct. 26, nov. 2, 9, 16, 23

**Alex. H. Bell, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John Fraas, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of October, 1906. FRANK P. MADIGAN, 14th and D sts. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,965. Administration. [Seal.] 43-3t

**Legal Notices.****R. Ross Perry & Son, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscribers, who were by the Supreme Court of the District of Columbia granted letters testamentary on the estate of James W. Orme, deceased, have with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 12th day of November, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 24th day of October, 1906. WILLIAM B. ORME, CHARLES B. BAILEY. By R. Ross Perry & Son, Attorneys. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,201. Administration. [Seal.] 43-31

**Barnard & Johnson, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia ancillary letters testamentary on the estate of Georgia H. Williams, late of the State of Connecticut, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of October, 1906. J. FLOYD JOHNSTON, 16 and 18 Exchange Place, New York, N. Y. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,968. Administration. [Seal.] 43-31

**Mason N. Richardson, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Ellis B. Hirst, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of October, 1906. HOMER T. HIRST, 1626 Swan St. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,968. Administration. [Seal.] 43-31

**Lester & Price, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Charles G. Zange, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of October, 1906. MARY M. E. STENZ, 925 9th St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,978. Administration. [Seal.] 43-31

**George C. Gertman, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Apollonia Hutchingson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 25th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of October, 1906. JACOB L. HUTCHINGSOHN, 221 2d St. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,989. Administration. [Seal.] 43-31

**Legal Notices.****John B. Larner, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

Estate of Susan W. Fowler, Deceased.  
No. 13,982. Administration Docket--

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate by Philip Larner, the executor named therein, it is ordered, this 24th day of October, A. D. 1906, that Mary W. North, Harold Havens, both of lawful age and residents of New York City, State of New York, and all others concerned, appear in said court on Monday, the 26th day of November, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the [Seal] first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 43-31

**THIRD INSERTION.****D. W. Baker, Solicitor**

In the Supreme Court of the District of Columbia,  
The United States of America v. John F. Gaynor,  
William T. Gaynor, Anson M. Bangs, Henry Clews  
& Company, Henry Clews, James B. Clews, John  
H. Clews, Charles F. Holdesberber, Leslie M. Shaw,  
Secretary of the Treasury of the United States.  
Equity No. 23,455. Docket No. 88.

The object of this suit is to restrain and enjoin Leslie M. Shaw, Secretary of the Treasury of the United States, from delivering twenty-five U. S. bonds, five per cent, matured February 1, 1904, together with all coupons and any increment or interest thereof, and presented to the Secretary of the Treasury, on July 12, 1906, for payment, unto Henry Clews & Company, or the defendant; Anson M. Bangs, or the defendants John F. Gaynor and William T. Gaynor, or any one for them; or from paying over to any of the above mentioned defendants the proceeds of said bonds; and to obtain from the court its final decree that the said twenty-five U. S. bonds, together with all coupons and any increment or interest thereof, shall be impressed in the hands of the said Leslie M. Shaw with a trust for the use and benefit of the complainant, the United States of America, and that the said court shall decree that the said bonds are held by defendants, Anson M. Bangs, Henry Clews & Company, representing the defendants, John F. Gaynor and William T. Gaynor, in trust for the complainant, United States of America, as the investments of part of the proceeds of a certain fraudulent and criminal conspiracy between the said defendants, John F. Gaynor and William T. Gaynor, and Oberlin Carter, and divers other persons set up in said bill, to defraud the United States in the construction of certain work in connection with the river and harbor improvements in the Southern Judicial District of Georgia called "Savannah District" and more particularly set out in said bill, the proceeds or part of the proceeds of said conspiracy being traced to the aforesaid investments made in the said bonds in the names of said defendants, John F. Gaynor and William T. Gaynor and being held for said defendants, John F. Gaynor, and William T. Gaynor, by the defendant, Anson M. Bangs, and by him presented through the defendant Henry Clews and Company to the said Secretary of the Treasury for payment; and that the court shall provide in said decree that the said bonds, together with the coupons and increment thereof, shall be delivered over to complainant, the United States of America, or that the proceeds thereof shall be paid to the said complainant. On motion of the complainant, it is, this 17th day of October, A. D. 1906, ordered that the defendants, John F. Gaynor, William T. Gaynor, and Anson M. Bangs, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided, a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post before said day. ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by R. P. Belew, Asst. Clerk. 43-31

Justice blanks of every description for sale at this office.

**Legal Notices.**

**T. Percy Myers, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of John A. Barber, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 5th day of November, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 12th day of October, 1906. J. WILLIAM HENRY, by T. Percy Myers, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,355. Administration. [Seal.] 42-St

**Barnard & Johnson, Attorneys**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Brison Norris, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 5th day of November, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 12th day of October, 1906. MARY E. NORRIS, Executrix, by Barnard & Johnson, Attorneys. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,207. Administration. [Seal.] 42-St

[Filed July 20, 1906. J. R. Young, Clerk.]

**W. E. Poulton, Jr., Solicitor**

In the Supreme Court of the District of Columbia.  
Cotter T. Brice v. The Unknown Heirs, Devisees, and  
Alliances of James Neale, "of Bennet," Deceased.  
Equity No. 26,148. Doc. No. 68.

On motion of complainant, it is, this 20th day of July, A. D. 1906, ordered that the defendants, the unknown heirs, devisees, and alliances of James Neale, "of Bennet," deceased, cause their appearance to be entered herein, on or before the first rule day, occurring three (3) months after the day of the first publication of this order; otherwise this cause will be proceeded with as in case of default. The object of this suit is to declare the title of complainant to lot numbered two (2) in square numbered five hundred and ninety-nine (599), in the city of Washington, in the District of Columbia, to be good in fee simple by adverse possession.

[Seal] By the court: ASHLEY M. GOULD, Justice.  
A true copy. Test: J. R. Young, Clerk, by  
Wms. F. Lemon, Asst. Clerk.

Sept 21, 28; oct 19, 26; nov 16, 23.

[Filed October 12, 1906. J. R. Young, Clerk.]

**Tucker & Kenyon, Solicitors**

In the Supreme Court of the District of Columbia.  
Nettie F. Tebbis, Complainant, v. James H. C. Wilson,  
Defendant. No. 26,235. Equity Doc. 58.

The object of this suit is partition of part of a tract of land situate in the county of Washington, District of Columbia, called "Weaver's Prospect," more particularly described in the bill of complaint filed in the aforesaid suit. On motion of the complainant, it is, this 12th day of October, 1906, ordered that the defendant, James H. C. Wilson, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in the Washington Law Reporter and The

[Seal] Washington Herald before said day. HARRY M. CLABAUGH, Chief Justice. A true copy.  
Test: J. K. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 42-St

Justice blanks of every description for sale at this office.

**Legal Notices.**

**Milton D. Campbell, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Charles A. Chapman, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the 18th day of April, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of October, 1906. ANNIE WILLIAMS, care of Milton D. Campbell, 1831 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,563. Administration. [Seal.] 42-St

**S. T. Thomas, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of David E. Sharrett, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of October, 1906. S. T. THOMAS, 422 D st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,967. Administration. [Seal.] 42-St

**Bates Warren and Wm. L. Browning, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Pennsylvania, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Anna Wackwitz Kummell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of October, 1906. TILLIE BIERESFORD, 7238 Mt. Vernon st. E. E., Pittsburgh, Pa. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,972. Administration. [Seal.] 42-St

**Perri W. Firshy, Attorney**  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.  
In re Estate of Mary L. Reddick, Deceased.  
Administration, No. 13,855.

DECEASED.

(Confirming Sale of Real Estate.)

Upon consideration of the report of Philip Stewart, executor, in the above entitled cause, filed herein on the 11th day of October, A. D. 1906, that he had sold the following described land and premises situated in the city of Washington, District of Columbia, distinguished as sub lot 23, in square 1095, in James F. Wollard's subdivision, as the said subdivision appears of record in the plats or plans of Washington, in the surveyor's office of the District of Columbia, together with the improvements thereon, consisting of a two story frame dwelling, known as premises No. 1708 East Capitol st., Northeast, in the District of Columbia, said land and premises having been sold on the 8th day of October, A. D. 1906, to Eugene B. Gaskins for \$385, upon the terms of one-third cash, a deposit of \$100 made at the time of sale and the balance payable in equal installments in one and two years from the day of sale and to be represented by promissory notes of the purchaser bearing interest at the rate of six per cent. per annum, payable semi-annually, and secured by a deed of trust on the property sold, or all cash, at the option of the purchaser, with the conveying, examination of title, and notarial fees at the cost of the purchaser, it is, by the court, this 18th day of October, A. D. 1906, adjudged, ordered, and decreed that the said sale be, and the same is, hereby ratified and confirmed, unless cause to the contrary be shown on or before the 16th day of November, A. D. 1906. Provided a copy of this decree be published in The Washington Law Reporter and The Washington Bee once a week for three successive

[Seal] weeks before the last said date. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 42-St

**Legal Notices.**

**John B. Larner, Attorney**  
**Supreme Court of the District of Columbia,**  
 Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Robert M. Larner, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of October, 1906. JOHN B. LARNER, 1335 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,944. Administration. [Seal.] 42-St

**Erskine Gordon, Attorney**  
**Supreme Court of the District of Columbia,**  
 Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John A. Bryan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of October, 1906. ERSKINE GORDON, 330 John Marshall Place. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,864. Administration. [Seal.] 42-St

**Trustees' Sale of Valuable Improved Real Estate.**

By virtue of a power of sale contained in a deed of trust given by George W. Adams to Marion Duckett and Elbert Dent, trustees, dated February 2, 1904, and recorded February 3, 1904, in liber No. 2794, at folio 281 et seq, one of the land records for the District of Columbia, default having been made in the payment of the indebtedness therein set forth, the undersigned, surviving trustee, will sell at public auction, on the premises, on Monday, October 29, 1906, at 3 o'clock P. M., all the land described in said deed of trust, being a part of original lot No. 26, in square numbered 552 of Washington City, D. C., beginning at a point on the south line of Q street, N. 20 feet E. of the northwest corner of said lot; thence east along said line of Q street 20 feet; thence S. 105 feet; thence W. 20 feet, and thence N. 105 feet to the beginning, improved by a small frame dwelling, No. 120 Q street N. W. Terms of sale: Cash; \$100 deposit required at the time of sale. Conveyancing at the cost of the purchaser. MARION DUCKETT, Surviving Trustee, 685 F st. N. W., Washington, D. C. 42-St

**Wm. A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
 Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Fanny Bryan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 14th day of September, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of October, 1906. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,804. Administration. [Seal.] 42-St

**William Hitz and Wm. A. Kenney, Attorneys**  
**Supreme Court of the District of Columbia,**  
 Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Walter W. Burdette, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 9th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 9th day of October, 1906. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary; WILLIAM HITZ, 1817 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,826. Administration. [Seal.] 42-St

**Legal Notices.**

**W. Gwynn Gardiner, Attorney**  
**Supreme Court of the District of Columbia,**  
 Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Adam Stenhouse, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of October, 1906. W. GWYNN GARDINER, Fendall Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,850. Administration. [Seal.] 42-St

**W. H. Sholes, Attorney**  
**Supreme Court of the District of Columbia,**  
 Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Asa Hazelton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of October, 1906. ANNA S. HAZELTON, 1215 9th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,947. Administration. [Seal.] 42-St

**Samuel Maddox, Attorney**  
**Supreme Court of the District of Columbia,**  
 Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Thomas Culhane, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 5th day of November, 1906, at 10 o'clock A. M., as the time, and said courtroom as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 16th day of October, 1906. BRIDGET M. CULHANE, administratrix, by Samuel Maddox, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,199. Admn. [Seal.] 42-St

**J. A. Maedel, Attorney**  
**Supreme Court of the District of Columbia,**  
 Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Charles Schroth, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 18th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of October, 1906. FRANK SCHROTH, 1435 Md. ave. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,982. Administration. [Seal.] 42-St

**Victor H. Wallace, Attorney**  
**Supreme Court of the District of Columbia,**  
 Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Cyrus Snyder, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of October, 1906. JULIA N. SNYDER, 1423 6th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,850. Administration. [Seal.] 42-St

# The Washington Law Reporter

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## DECISIONS THIS WEEK BY THE COURT OF APPEALS.

**Husband and Wife, Contracts Between; Right of Assignee of Wife to Sue Husband.**

In *Bronson v. Brady*, the action was by the assignee or indorsee of a note made by a husband to his wife and by her indorsed to the plaintiff. The Court of Appeals, in an opinion by Mr. Justice Robb, upholds the right of husband and wife to contract with each other. A note made by a husband to his wife is declared to be her sole and separate property under the Code, which she has power to transfer or assign; and whether or not the wife might herself sue the husband at law upon such a note, the right of her assignee to sue him thereon is sustained. The opinion is reported in this issue.

**Equity; Deeds of Trust; Decree Setting Aside Release Reversed.**

In *Fifth Congregational Church v. Bright*, the appeal was from a decree setting aside a release of a deed of trust, and ordering a sale of the property to satisfy the debt secured. It appeared that the grantor in the deed of trust, who was appellant's predecessor in title, had paid the amount of the note to E. Welsh Ashford, in whose hands the note was placed for collection by the holder, and that Ashford and

his cotrustee had thereupon executed a deed releasing the property from the operation of the deed of trust. Ashford had, however, returned to the holder what purported to be the genuine note with an extension of two years endorsed thereon, and thereafter he had absconded. The Court of Appeals, in an opinion by Mr. Justice Robb, holds that Ashford in receiving payment of the note, was the agent of the holder, and not of the debtor, and therefore reverses the decree setting aside the deed of release.

**Landlord and Tenant; Breach of Covenant to Pay for Repairs.**

In *Keroes v. Richards*, the appeal was from a judgment in favor of the plaintiff in a suit for possession of premises leased to defendant. The lease contained a covenant on the part of the lessee to pay for all repairs. It appeared that a terra cotta sewer-pipe in the basement of the premises was defective, and the plumbing inspector required that it be replaced with an iron pipe as required by the present building regulations. The lessee refused either to make the change or to pay the cost thereof, and the work was done by the lessor. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, holds that the lessee was compelled by his covenant to pay at least a proportional part of the expense, and his failure to do so was a breach of the covenant entitling the lessor to treat the lease as forfeited. The judgment below is affirmed. The opinion is reported in this issue.

**Beneficial Associations; Change of Charter After Issue of Certificate.**

In *Brown v. Grand Fountain, etc., et al.*, the proceeding was to determine the rights of rival claimants to the proceeds of two certificates or policies of insurance issued by an incorporated association. By the terms of the certificates the association promised to pay to the heirs or assigns of the assured the amounts stipulated. Subsequent to their issue the charter of the association was amended so as to restrict the beneficiaries of the policy-holders to the family, heirs, blood relatives, affianced husband or wife, or persons dependent upon the policy-holder. Claim to the proceeds of the policies was made by appellant through assignments to him by the policy-holder as executor of her estate, and also by certain of her next of kin. The Court of Appeals, in an opinion by Mr. Justice Robb, holds that the change of charter did not affect the right of the policy-holder to assign her policies, and, therefore, adjudgets in favor of the appellant.

**Contracts; Evidence.**

In *Toledo Computing Scale Co. v. Garrison*, the suit was to recover the purchase price of a scale. It was contended by defendant that the scale had been left at his store upon trial. The written agreement signed by him provided, however, for the purchase of the scale; but defendant claimed that he had signed this paper without reading it (though he had opportunity to do so) on the representation of plaintiff's agent that it was a receipt for the scales. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, holds that the trial court should have directed a verdict for the plaintiff, and reverses the judgment.

**Equity; Suit Affecting Real Estate in Another Jurisdiction.**

In *Columbia National Sand Dredging Co. v. Morton et al.*, the suit was to enjoin the defendants from removing sand in the bed of Piscataway Creek, Prince George's County, Maryland. No question of jurisdiction was raised, and the court below granted an injunction; but the Court of Appeals, in an opinion by Mr. Chief Justice Shepard, holds that the courts of this District were without jurisdiction to entertain the suit, the property being located in Maryland, even though the parties resided here. It, therefore, reversed the decree and directed that the bill be dismissed for want of jurisdiction.

**Damages for Wrongfully Suing Out Injunction.**

In *Hutchins v. Munn*, the appeal was from a decree awarding to the appellee damages in the sum of \$6,000 for the wrongful suing out by the appellant of an injunction to restrain the appellee from building an addition to her residence in this city which adjoined that of the appellant. The Court of Appeals, in an opinion by Mr. Justice Robb, affirms the decree below, which awarded damages in the sum stated.

**Criminal Law; Homicide Committed While Attempting Robbery; Indictment for Murder.**

In *United States v. Evans et al.*, the appeal was from an order of the court below sustaining a demurrer to an indictment for murder. The indictment charged that, while the defendants were attempting to rob a person named, they made an assault upon him which caused his death. The trial court sustained the demurrer on the ground that robbery is not an "offense punishable by imprisonment in the penitentiary" within the meaning of section 798 of the Code, inasmuch as it may be punished by a jail sentence in the discretion of the court. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, reverses the judgment,

holding that the words "punishable by imprisonment in the penitentiary," include not only offenses that can only be punished by such imprisonment but such as may be so punished, and that robbery remains an infamous crime, as at common law, notwithstanding the court may, in its discretion, impose only a jail sentence.

**Trustee's Sale; Petition to Set Aside Dismissed.**

In *Parsons v. Little et al.*, the appeal was from an order dismissing a petition by an intervenor to set aside a sale under deed of trust, made by authority of the court in proceedings for the appointment of a receiver for a corporation, etc. The petition alleged gross inadequacy of price, but no facts were stated showing such inadequacy. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, affirms the order dismissing the petition.

**Equity; Bill of Review; Laches.**

In *McGowan v. Elroy*, the appeal was from a decree dismissing a bill by which it was sought to review a decree previously rendered which vacated a conveyance on the ground of undue influence and directed an accounting of rents and profits. It appeared the grantee in the deed was also devisee of the property under a will made by the grantor prior to the date of the deed and which will had been admitted to probate after contest subsequently to the date of the decree sought to be reviewed. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, modifies the decree so as to show a dismissal without prejudice and, as modified, affirms it.

**Promissory Note; Judgment for Plaintiff Affirmed.**

In *Harr v. Roome*, the appeal was from a judgment in favor of the plaintiff in an action for money had and received. The plaintiff claimed the proceeds of a promissory note which she claimed had been collected by the defendant for her account. The judgment below is affirmed, in an opinion by Mr. Justice McComas, which is reported in this issue.

**Contracts; Breach of Warranty; Rescission.**

In *Moran v. Wagerer*, the judgment below is reversed in an opinion by Mr. Justice Robb. It appeared the defendant contracted with the plaintiff for eighteen carloads of oats which, when received, were unsatisfactory and he refused to accept or pay for them. His right to rescind where the goods furnished did not come up to the quality contracted for is sustained.

## Court of Appeals of the District of Columbia.

JACOB KEROES, APPELLANT,

v.

EDWARD N. RICHARDS.

## LANDLORD AND TENANT; COVENANT TO PAY FOR REPAIRS; BREACH.

A lease provided that the lessee should pay for all repairs, and should surrender the premises at the expiration of his tenancy in good order, ordinary wear and tear, etc., excepted. A terra cotta sewer pipe existed beneath the premises, which at the time of the lease was very defective. The municipal authorities, after inspection, condemned the terra cotta piping and ordered that iron pipe, as required by the then existing building regulations, be substituted. The lessee refusing to do the work, the lessor had it done and presented the bill to the lessee, who declined payment. Treating the lease as forfeited, the lessor, after demand, brought suit for possession. Held, that the covenant of the lessee made it the duty of the lessee to reimburse the lessor to the extent, at least, of such proportion of the entire cost of reconstruction as would have been incurred if it had been of the less expensive material used in the original construction, and his failure to pay even that proportional part was a violation of his covenant entitling the lessor to declare the lease at an end.

No. 1701. Decided November 7, 1906.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 48,108, entered upon an agreed statement of facts in a landlord and tenant proceeding. Affirmed.

*Mr. Hayden Johnson* for the appellant.*Mr. Wm. C. Prentiss* for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This action was begun by Edward N. Richards, in the justice court under section 20 of the Code, to recover the possession of a house in the city of Washington known as No. 1332 G street northwest, from Jacob Keroes, lessee, under the claim that tenant's lease had ceased and determined. The case was removed on appeal to the Supreme Court of the District, where judgment was rendered for the plaintiff.

The case was submitted upon the following agreed facts: On February 24, 1904, M. L. Johns and S. Louise Campbell, whose title has since been acquired by the plaintiff, entered into an agreement with Jacob Keroes whereby they leased him the said premises for a term of five years, upon a monthly rental of \$70. The lessee covenanted among other things: "That all repairs shall be paid for by him and that he will surrender the same at the expiration of his tenancy in good order, ordinary wear and tear and damage by act of God or public enemy excepted." There was an agreement for forfeiture of the lease and re-entry by the lessors upon the failure of the lessee to perform any of the covenants.

There had always existed beneath the building a terra cotta sewer pipe, through which the sewage from said premises was conveyed to the main public sewer. The drain was constructed at a time when the building regulations permitted terra cotta piping. For some years prior to the execution of the lease, this piping, as the result of wear and tear caused by time and usage, had become very defective, and it was in this condition when the lease was exe-

cuted and the lessee entered into possession. It was in the same condition when removed that it had been when the lease was executed. Plaintiff caused inspection of the plumbing in said building to be made by the building inspector, who condemned the terra cotta sewer and ordered that iron pipe be substituted, as called for by the then existing building regulations. Plaintiff called upon defendant to make this improvement, which he refused to do. Plaintiff thereupon had the work done with iron pipe, and presented the bill to affiant, who refused to pay upon the grounds, *first*, that the work done was an improvement and not a repair; *second*, that his covenant to repair was to keep the house in the repair in which he found it, and as the defect was present when he leased the house he was not charged by his covenant with the duty of correcting it; *third*, that as the defect was the result only of ordinary wear he was not chargeable under his covenant to repair.

About July 13, 1905, plaintiff reported to the inspector of plumbing that water was draining from some source into the cellar of premises No. 1330, occupied by plaintiff, and asked an investigation. This was made, and the inspector reported the drain as defective. July 15, 1905, notice was given to plaintiff by the inspector to make the necessary repairs and changes. Plaintiff, upon refusal of defendant to have the work done, procured the same to be done by licensed plumbers, who found that the terra cotta sewer was cracked, broken, and disconnected. The inspector notified the plaintiff that the terra cotta pipe could not remain or be used as a sewer, and ordered that it be replaced with cast-iron pipe, which was done. The bill therefor, amounting to \$121.60, was presented to defendant, who declined payment, as heretofore stated. September 29, 1905, plaintiff gave notice to defendant of the determination of his tenancy, and ordered him to surrender the premises at the expiration of seven days from the day of service.

It is the settled rule of the common law that there is no implied covenant by the lessor that the leased premises are in good repair, or fit for the intended use. *Viterbo v. Friedlander*, 120 U. S., 707, 712.

When the lessee covenants to keep old premises in repair, some authorities hold that his obligation extends no further than keeping them, and returning them in as good condition as they were when leased. A better established rule seems to be that his obligation is to first put them in reasonable repair and then keep them so; particularly if the defects are open to observation, and where there has been no fraudulent representation or concealment by the lessor at the time of making the contract. *Payne v. Haine*, 16 M. & W., 541, 545; *Myers v. Burns*, 35 N. Y., 269, 270; *Luckrow v. Horgan*, 58 N. Y., 635; *Waddell v. De Jet*, 78 Miss., 104, 110. In the case first cited, it was said by Parker, B.: "The lessee was bound to put them in repair, as old premises; for he could not keep them in good repair without putting them in it."

The covenant in this case was not to keep in repair, but "that all repairs shall be paid by him, and that he will surrender the same at the



expiration of his tenancy in good order, ordinary wear and tear, etc., excepted."

If to keep in repair means that premises in need thereof at the time of the lease are first to be put in that condition by the lessee, then, for a stronger reason, a covenant to pay for all repairs would seem to bind him to pay for all that were needed at the time to render the building fit for its ordinary uses, in compliance with all valid public regulations having regard to health and safety. Consequently, when it was discovered by the municipal authorities that the drain connecting the house with the public sewer was in a defective condition, and the lessor, as owner of the premises, was compelled to repair it, the lessee was under obligation to reimburse him for the necessary expense, notwithstanding the fact that the defective condition existed at the time of the lease.

The ordinary meaning of repair is: "To restore to a sound or good state after decay, injury, dilapidation, or partial destruction: to renew; to restore; to amend" (Webster Dict.). Now, had the drain been restored to the condition it was in when originally constructed—that is to say, reconstructed with material of the same kind—we are of the opinion that the necessary work would constitute repair and not an improvement. The building regulations, having been meanwhile changed so as to prevent reconstruction with the same material, and to require iron pipe instead, it is contended, on behalf of the appellant, that the new drain, constructed of different and more expensive materials, in compliance with the amended regulations, became an improvement and was, therefore, not a repair within the terms of his covenant.

The question is one of difficulty and the authorities are not in agreement in respect of its solution. In a case in the Supreme Court of Michigan, the lease was of a wooden building with a covenant by the lessee to rebuild in case of destruction. After the execution of the lease, and before the destruction of the premises, a valid public ordinance prohibited the erection of wooden buildings in the particular section, and required all construction thereafter to be of brick, stone, or other approved fire-proof material. The action was brought by the lessor for breach of the covenant, and it was held that the lessee was not under obligation to rebuild with the more expensive material required by the ordinance (*Cordes v. Miller*, 39 Mich., 581). No question was raised as to his obligation to pay, at least, as much of the cost of reconstruction, as the erection of a wooden building would have amounted to.

In *Payne v. Haine*, supra, it was held, that while the lessee was under obligation to put the premises in repair and then to keep them in good repair thereafter, yet, as the building was an old one, the obligation extended no farther than to keep the house in repair, as an old building.

In *Martinez v. Thompson*, 80 Tex., 568, the lessor covenanted to keep the roof in repair. The lessee covenanted, with this exception, to bear all expenses of repairing and improving the building, and made extensive improvements to fit the building for his uses. During the term the municipal authorities declared one

of the walls unsafe and compelled the owner, and lessor, to rebuild it. The rebuilding was of the same kind of material. No question was made as to the character of the material, or in respect of the power of the city to compel the reconstruction of the wall. It was held that the lessor could recover the cost of the new wall. None of those cases involves the particular question that is here presented.

Being of the opinion that the old drain was out of repair in the ordinary sense of that word, we think that the covenant of the lessee made it his duty to reimburse the lessor to the extent, at least, of such a proportion of the entire cost of reconstruction as would have been incurred if it had been of the less expensive kind of material used in the original construction. What this would be is apparently a matter of easy ascertainment. We can not regard the effect of the intervening building regulations as discharging the lessor from all obligation.

For his failure to pay the charges for repair, and repudiation of liability for any part thereof, the lessor claimed the right to declare the lease at an end; and this action is for the recovery of the possession of the premises by virtue of his assertion of that power.

The question of his right to recover the entire cost of the reconstruction of the drain with the required and more expensive material is not involved, but will arise in any appropriate action that he may bring for that purpose.

All that we now decide is that the lessee was bound by the covenant to pay, at least, a proportional part of the cost of the repair of the drain, and that having failed to offer to pay that proportion, and having denied his liability for that proportion as well as for the whole, he violated the covenant and brought into exercise the right of the lessor to declare the lease at an end.

The lessor was, therefore, entitled to recover the possession of the premises, and the court was right in the judgment rendered. The judgment will, therefore, be affirmed with costs.

**Affirmed.**

**SIMON D. BRONSON, APPELLANT,**

**v.**

**EDMUND BRADY.**

**HUSBAND AND WIFE; CONTRACTS BETWEEN; PROMISSORY NOTE.**

1. Under section 1151 of the Code of the District, husband and wife may contract with each other.
2. A promissory note made by a husband to his wife as payee, is her sole and separate property under the statute; and under section 1151 of the Code she has power to transfer or assign it, and her transferee or assignee may sue the husband thereon.
3. In an action by the assignee of such a note against the husband, an affidavit of defense in which the only ground of defense set up is the coverture of the maker and the original payee, is insufficient in law, and judgment for plaintiff under the 73d Rule is properly granted.

No. 1681. Decided November 7, 1906.

**APPEAL** by defendant from judgment of the Supreme Court of the District of Columbia, at Law, No. 48,301, entered under the 73d Rule, in action on a promissory note. **Affirmed.**

**Mr. A. H. Bell** for the appellant.

*Mr. Geo. E. Hamilton, Mr. M. J. Colbert, and Mr. John J. Hamilton for the appellee.*

Mr. Justice ROBB delivered the opinion of the Court:

On February 2, 1906, appellee filed suit at law against appellant to recover the sum of \$3,000, with interest thereon at 4 per centum per annum until paid, as the owner and holder of a note for that amount made by appellant. To his declaration appellee attached an affidavit in accordance with the 73d Common-law Rule of the Supreme Court of the District, and as particulars of demand copy of said note and assignment thereof, as follows:

"WASHINGTON, D. C., July 28th, 1905.

Six months after date I will pay Mrs. Win-fred Bronson 30000.00 three thousand dollars with 4 per cent. *Ent-rest* until paid.

S. D. BRONSON.

For value received I hereby transfer, set over and assign unto Edmund Brady all my right, title and interest in and to the above note for three thousand dollars, dated July 28, 1905, signed by S. D. Bronson and made payable to me six months after date with interest at four per cent. per annum until paid.

WINIFRED BRONSON.

NOTE.—Endorsed Mrs. Winifred Bronson."

Appellant filed plea of general issue, and attached thereto an affidavit of defense under the above rule. This affidavit set up the defense that the payee named in said note was the wife of appellant; that appellee did not acquire said note until after maturity thereof; and that appellee did not receive said note without notice or for value, but merely as agent of the payee.

The plaintiff below then moved for judgment under the above rule, and judgment was accordingly entered, and defendant below noted and perfected his appeal to this court.

The case is here submitted, without argument, upon the briefs.

The brief on behalf of appellant assigns as error that "the court erred in holding the affidavit of defense to be insufficient in point of law and granting the motion for judgment," and in the argument upon this assignment of error takes the position that "a maker of a note given by husband to wife, or vice versa, may defeat a recovery against him or her in an action brought by the endorsee or payee on the ground that the note was given to the spouse of the maker and therefore a nullity."

The basis of our decision must necessarily be our construction of the Code of the District of Columbia with reference to the rights of married women. The act of Congress of April 10, 1869 (16 Stat., 45), entitled "an act regulating the rights of property of married women in the District of Columbia," reads as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in the District of Columbia the right of any married woman to any property, personal or real, belonging to her at the time of marriage, or acquired during marriage in any other way than by gift or conveyance from her husband shall be as absolute as if she were femme sole, and shall not be subject to the disposal of her husband, nor be lia-

ble for his debts; but such married woman may convey, devise, and bequeath the same, or any interest therein, in the same manner and with like effect as if she were unmarried.

"Sec. 2. And be it further enacted, That any married woman may contract, and sue and be sued in her own name, in all matters having relation to her sole and separate property in the same manner as if she were unmarried; but neither her husband nor his property shall be bound by any such contract nor liable for any recovery against her in any such suit, but judgment may be enforced against her sole and separate estate in the same manner as if she were sole."

In 1874, in "the revision of the statutes relating to the District of Columbia," the above act became sections 727 to 730, inclusive, of "The Revised Statutes of the United States relating to the District of Columbia," reading as follows:

"Sec. 727. In the District the right of any married woman to any property, personal or real, belonging to her at the time of marriage, or acquired during marriage in any other way than by gift or conveyance from her husband, shall be as absolute as if she were unmarried, and shall not be subject to the disposal of her husband, nor be liable for his debts.

"Sec. 728. Any married woman may convey, devise, and bequeath her property, or any interest therein, in the same manner and with like effect as if she were unmarried.

"Sec. 729. Any married woman may contract, and sue and be sued in her own name, in all matters having relation to her sole and separate property, in the same manner as if she were unmarried.

"Sec. 730. Neither the husband nor his property shall be bound by any such contract, made by a married woman, nor liable for any recovery against her in any such suit, but judgment may be enforced by execution against her sole and separate estate in the same manner as if she were unmarried."

This statute was in turn superceded by the act of June 1, 1896 (29 Stat., 193), the first two sections of which are as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the property, real and personal, which any woman in the District of Columbia may own at the time of her marriage, and the rents, issues, profits, or proceeds thereof, and real, personal, or mixed property which shall come to her by descent, devise, purchase, or bequest, or the gift of any person, shall be and remain her sole and separate property, notwithstanding her marriage, and shall not be subject to the disposal of her husband or liable for his debts, except that such property as shall come to her by gift of her husband shall be subject to, and be liable for, the debts of the husband existing at the time of the gift.

"Sec. 2. That a married woman, while the marriage relation subsists, may bargain, sell, and convey her real and personal property, and enter into any contract with reference to the same in the same manner, to the same extent, and with like effect as a married man may in relation to his real and personal property, and she may, by a promise in writing, expressly make her separate estate liable for necessities

purchased by her or furnished at her request for the family."

This act of 1896 was codified in the Code of the District of Columbia, enacted March 3, 1901 (31 Stat., 1189), sections 1151 and 1154 of which read as follows:

"Sec. 1151. All the property, real, personal, and mixed, belonging to a woman at the time of her marriage, and all such property which she may acquire or receive after her marriage from any person whatsoever, by purchase, gift, grant, devise, bequest, descent, in the course of distribution, by her own skill, labor, or personal exertions, or as proceeds of a judgment at law or decree in equity, or in any other manner, shall be her own property as absolutely as if she were unmarried, and shall be protected from the debts of the husband and shall not in any way be liable for the payment thereof; Provided, That no acquisition of property passing to the wife from the husband after coverture shall be valid if the same has been made or granted to her in prejudice of the rights of his subsisting creditors."

"Sec. 1154. Married women shall hold all their property, of every description, for their separate use as fully as if they were unmarried, and shall have power to dispose of the same by deed, mortgage, lease, will, gift, or otherwise, as fully as if they were unmarried; Provided, that no disposition of her real or personal property, or any portion thereof, by deed, mortgage, bill of sale, or other conveyance, shall be valid if made by a married woman under twenty-one years of age."

A gradual, but nevertheless decided change has taken place in the status of women until today their sphere of activity embraces almost every avenue of business, almost every profession, and almost every calling. With this change has come a demand for a corresponding recognition of their rights in the statutes of the States and nation. A careful examination of these statutes discloses that the tendency of the times is to emancipate married women from the harshness and disabilities of the common law, and to place them upon an equal footing with men. As was said by this court in the recent case of *Dodge v. Rush*, decided June 13, 1906 34 Wash. Law. Rep., 501:

"The underlying ground of the common-law rule of discrimination between husband and wife . . . has been swept away by the modern legislation that has so generally relieved the wife of the ordinary disabilities of coverture."

A brief review of various State decisions construing statutes similar to the statute applicable to this case will be helpful.

In the case of *Heyman v. Heyman*, 210 Ill., 524, a decision of the Appellate Court, sustaining a decree of the Circuit Court, that a business was carried on as a copartnership between husband and wife as copartners, and that one-half of the assets of the partnership belonged to the wife, was in turn sustained by the Supreme Court of that State. The court, after stating the general rule to be that "a partnership can not exist between husband and wife," said:

"Such, however, can not be the law in Illinois. Section 6 of chapter 68 of the Revised Statutes

of Illinois, being the act to revise the law in relation to husband and wife, provides as follows:

"Contracts may be made and liabilities incurred by a wife and the same enforced against her to the same extent and in the same manner as if she were unmarried, but, except with the consent of her husband, she may not enter into or carry on any partnership business, unless her husband has abandoned or deserted her, or is idiotic or insane, or is confined in the penitentiary."

"It has been held by this court that, under the existing law in this State, married women are placed on the same footing as *femes soles* in respect to all property rights, including the means to acquire, protect, and dispose of the same; and that all restrictions upon the power of husband and wife to contract with each other, except so far as they are expressly retained, are removed. It thus appears that the husband and wife may contract with each other without restriction, except that the wife may not enter into or carry on any partnership business 'except with the consent of her husband.' The plain inference is, that she may carry on a partnership business if she has the consent of her husband, and, as she may make contracts with him, there is no reason why she may not make a partnership contract with him, or a contract for a partnership business with him, where she obtains his consent thereto."

While this was an equity case, the capacity of a wife to contract generally with her husband was clearly recognized.

The case of *Hamilton v. Hamilton*, 89 Ill., 549, involved a contract between husband and wife pending the suit by the latter for divorce, by which the husband agreed to convey certain land to the wife and pay her \$500. The contract was held invalid as apparently made in furtherance of the divorce proceedings which were pending, and hence against public policy, but the court expressly held that such a contract, not being prohibited by the statute, would have been valid had it not been against public policy, saying:

"The question chiefly discussed in this case is that of the capacity of plaintiff, at the time of contract, to contract with her husband. The statute of March 30, 1874 (R. S., 576), goes much further in abolishing disabilities arising from coverture, than any former statute. By it a wife may sue and be sued as if unmarried; an attachment or judgment may be enforced against her as if she were unmarried; and she may defend in her own right when sued with her husband; 'contracts may be made and liabilities incurred by a wife . . . as if she were unmarried,' except contracts of partnership; she may own in her own right real and personal property obtained by gift, descent, or purchase, and may convey the same as may the husband property belonging to him. There is nothing in all this which forbids her to contract with her husband, and the words are general and broad enough to sanction such contracts. Not only so, but it is provided in section 9 of the act, that where husband and wife shall be living together no transfer of goods between them shall be valid as against the rights of third persons, unless in writing, duly acknowledged and recorded. This provision necessarily

implies that the former broad language of the statute was used in a sense to authorize contracts between husband and wife, and make them effective in all cases for lawful purposes, except in so far as otherwise provided by the act itself. We find nothing in the act limiting her capacity to contract in this regard."

It will be noticed that the court in this case based its ruling upon the fact that the words of the statute were sufficiently broad and general to embrace such contracts, and that, in the absence of express language of prohibition, the court would sustain them.

Speaking of this same statute, in *Thomas v. Mueller*, 108 Ill., 36, the court said:

"As to the management and control of her property the wife is almost entirely emancipated from all power of her husband. She may buy and sell property, and sue and be sued in reference to it, independent of his control, and the 8th section in terms limits their power to sue each other for compensation for labor performed or services rendered for the other, whether in the management of property or otherwise. From this it is manifest that the legislature intended to remove all restrictions on their power to contract with each other, and to enable them to sue each other, on such contracts, in the same manner as if they were not married."

Section 4835 of the Revised Statutes of Missouri provides that: "A married woman shall be deemed a feme sole so far as to enable her to carry on and transact business on her own account, to contract and be contracted with, to sue and be sued, and to enforce and to have enforced against her property such judgments as may be rendered for or against her, and may sue and be sued, at law or in equity, without her husband being joined as a party." And the Supreme Court of Missouri in the recent case of *Rice et al. v. Sally*, found in 176 Mo., 107, in construing this statute, said:

"The more recent cases by the St. Louis Court of Appeals, decided since the preparation of the brief by counsel for the respondent interpleader, to wit, *Grimes v. Reynolds*, 94 Mo. App., 576, and *Grimes v. Reynolds*, 94 Mo. App., 589, and *Beagles v. Beagles*, 95 Mo. App., 338, disapprove both *Lindsay v. Archibald*, 65 Mo. App., 117, and *McCorkle v. Goldsmith*, 60 Mo. App., 475, and *Winn v. Riley*, 51 Mo. App., 61, and hold that a proper construction of our Married Woman's Acts, supra, leads to the complete emancipation of the wife from her matrimonial bonds, so far as her property rights are concerned in law, as well as in equity, and that she may contract with her husband and sue and be sued by him at law.

"Mrs. Sally's right to the goods seized by the sheriff under plaintiff's attachment depends entirely upon the validity of the chattel mortgage executed to her by her husband, the defendant in the attachment, and her possession thereunder. That this transfer was enforceable in equity, if not made to defraud creditors of her husband, is not questioned; but can it be sustained at law, and in this form of procedure? After a careful consideration we are of the opinion that the intention of our legislature was to remove the disabilities under which a married woman labored at common law so as to permit her to

contract and be contracted with, sue or be sued, and that the language used, *being entirely without exception*, is broad enough to permit her to contract with her husband, and that her contracts with him will be enforced at law, just as if she had contracted with third persons, and this we think is the weight of judicial opinion in other States where statutes no broader than ours have been construed. Her right, then, being a legal one, we see no obstacle to her maintaining replevin or interpleading in an attachment case."

The language of the Missouri statute, it will be observed, is not as broad and comprehensive as the language in the Code of the District of Columbia.

Neither is the language of the Nebraska statute as broad as that of our Code, since the first three sections of it provide that:

"Sec. 1. The property, real and personal, which any married woman may own in this State at the time of her marriage, and the rents, issues, profits, or proceeds thereof, and any real, personal, or mixed property which shall come to her by descent, devise, or purchase, or the gift of any person *except her husband* or she shall acquire by purchase or otherwise, shall remain her sole and separate property notwithstanding her marriage, and not be subject to the disposal of the husband or liable for his debts.

"Sec. 2. A married woman, while the married relation exists, may bargain, sell, and convey her real and personal property, and enter into any contract in reference to the same in the same manner, to the same extent, and with like effect as a married man may in relation to his real and personal property.

"Sec. 3. A woman may, while married, sue and be sued in the same manner as if she were unmarried."

The Supreme Court of that State in *May v. May*, 9 Neb., 16, held that a wife while living with her husband could maintain suit against him in her own name on a note made by him. The defense set up in the answer was that the plaintiff was the wife of defendant. Justice Cobb delivered the opinion of the court, and after reviewing the Married Woman's Acts of Maine, Kansas, Iowa, Ohio, California, and New York, said:

"In none of the above-mentioned States has the legislature passed any act which in terms changes the common law in regard to the nature and character of the married relation or the unity of the persons of husband and wife, and the above cases must of necessity have gone upon the theory that the statutes of the said States respectively defining the rights of women in the marriage relation in respect to the ownership, control, and disposition of property, have in effect done away with the technical unity of husband and wife as formerly existing at common law. At least such is my opinion. So that when our statute says: 'A married woman, while the marriage relation exists, may bargain, sell, and convey her real and personal property, and enter into any contract in reference to the same in the same manner, to the same extent, and with like effect as a married man may,' etc. It means that she may sell the same to, or contract with reference to the same

with, anybody who is generally competent to contract, and that the other contracting party will be bound by such contract regardless of whatever relation may exist between them," and then went on to say:

"But need we look further than to our own statutes for authority upon which to decide this case? Our Code provides that:

"A woman may, while married, sue and be sued in the same manner as if she were unmarried."

"This capacity to sue is not limited, and no person or class of persons is exempted from its effect. If she were unmarried, there could be no doubt that she could sue this same man. The statute, as I understand it, plainly provides that she can do the same thing, though married to him. . . . The conclusion is, therefore, irresistible that the action at bar was properly brought, and that the District court erred in overruling the demurrer to the answer."

Without multiplying authorities, we may add that we have been unable to discover any case where a similar statute has been held not to authorize contracts between husband and wife. The courts of some of the States, notably Massachusetts and Vermont, have held such contracts invalid, but in each of those States the statute contained a provision expressly prohibiting a married woman from contracting with her husband. The fact that the legislatures of those two States deemed it necessary to engraft this prohibition on the statute giving married women the right to contract "in the same manner as if sole," adds cogency to the decisions of courts of other States that the absence of such a prohibition in similar statutes enables married women to contract with their husbands.

Let us analyze the statutes applicable to this case.

The original act of 1869 recognized the right of a married woman to the property belonging to her at the time of marriage or acquired during marriage, excepting property acquired "*by gift or conveyance from her husband*." The statute also permitted her to "devise and bequeath the same."

In the law of 1874, as above quoted, the first section of the act of 1869 was divided into two sections, and, instead of limiting the right to bequeath "*the same*" property mentioned in the first part of the section, she was permitted, to "convey, devise, and bequeath *her property*, or any interest therein, in the same manner and with like effect as if she were unmarried." The Supreme Court of the United States, in *Hamilton v. Rathbone*, 175 U. S., 414, held that this apparently slight change signified an intent on the part of Congress to remove the restriction in the original act, and, therefore, sustained a bequest by a wife of property she had acquired by gift from her husband.

This liberal construction by the Supreme Court has a distinct bearing upon the present case, for in the original act of 1869 by express prohibition a married woman could acquire no separate property "*by gift or conveyance from her husband*," while in the act of June 1, 1896, supra, which superceded the original act of 1869 as amended by the act of 1874, Congress went one step further, and provided that she

might hold as her separate property all property, real and personal, which she owned at the time of marriage, or which should come to her "by descent, devise, purchase, or bequest, or the gift of any person," adding this provision "except that such property as shall come to her by gift of her husband, shall be subject to, and be liable for, the debts of the husband existing at the time of the gift," clearly indicating that she might acquire property by purchase or gift from her husband and hold the same as her separate property subject only to the liability of the property she should acquire by such gift to the debts of the husband then existing.

But the intent of Congress is made still plainer in sections 1151 and 1154 of the Code carrying forward the act of 1896 above quoted. These sections of the Code provide that all property, both real and personal, belonging to a married woman at the time of her marriage, "*and all such property which she may acquire or receive after marriage from any person whomsoever, by purchase, gift, grant*", etc., "shall be her own property as absolutely as if she were unmarried", provided, only, "that no acquisition of property passing to the wife from the husband after coverture shall be valid if the same has been made or granted to her in prejudice of the rights of his subsisting creditors".

An examination of the statutes applicable to married women in the District of Columbia irresistibly leads to the conclusion that section 1151 of the Code was intended to authorize and does in fact authorize contracts between, or gifts from, husband to wife, excepting only property acquired by the wife from her husband in prejudice of the rights of his creditors. Indeed, the language of the Code is broader and more comprehensive than the language of the statutes in the various States, to which reference has been made, and which uniformly have been held to authorize contracts between husband and wife.

In this case it is unnecessary to inquire whether under the provisions of the Code a wife can maintain a suit at law against her husband for recovery on a note. We shall confine our ruling strictly to the facts in the case. The note, being her absolute and separate property, she was authorized by section 1154 of the Code to transfer or assign it, and the authority to sue the appellant was incident to appellee's title to the note.

Assuming, without deciding, that a technical bar, growing out of the marital relations, existed to such suit at law, that bar has been removed by the assignment of the note. The Supreme Court of Vermont, in the case of *Spencer vs. Stockwell*, 76 Vt., 176, which was a suit on a note given the wife prior to coverture and after coverture endorsed by her to a third person for collection only, said:

"It is further contended that, as the wife could not sue her husband upon the note, she could not give the plaintiff authority for that purpose. It is a sufficient answer to this claim that the wife retained every right in respect to the note after her marriage that she possessed before, except the right to sue her husband upon it. She could sell the note absolutely, or transfer it for collection as well after as before her marriage. The statute places no inhibition

upon this act; on the contrary, it gives her the same authority to deal with the note as if she were unmarried. She did not confer authority upon the plaintiff to sue the defendant; that authority was incident to the plaintiff's legal title to the note, although the equitable interest remained in the wife."

In the case of *George vs. High*, 85 N. O., 99, the court, after citing several cases where courts of equity had enforced contracts between husband and wife, said:

"These cases have not been referred to because they have any direct bearing upon the plaintiff's case, for being a plain action of assumpsit, hers must depend upon the law as distinguished from equity, but they have been cited because they serve to show the policy of the courts of modern times in regard to this fiction as to the unity of person and their readiness to dispense with it on account of its tendency oftentimes to defeat real justice and disappointment the most generous intentions of husbands."

Moreover, in the case at bar the pleadings do not disclose that any contention was made that the note was not given for a valuable consideration, the only defense, as stated before, being the coverture of the maker and the original payee.

As this note was the separate property of Mrs. Bronson and legally assigned by her to appellee, we hold that the affidavit of defense was insufficient in law, and affirm the judgment below, with costs.

Affirmed.

OLIVER R. HARR, APPELLANT,

v.

LILLIAN PIKE ROOME.

ACTION FOR MONEY HAD AND RECEIVED; EVIDENCE; INSTRUCTIONS.

1. A count for money had and received may in general be proved by any legal evidence showing that defendant has received or obtained possession of the money of the plaintiff which in equity and good conscience he ought to pay over to the plaintiff, and such a count may be supported by evidence in regard to things treated as money, as, for example, a promissory note.
2. In an action for money had and received, the jury are properly instructed that if they find that defendant received a note, the property of the plaintiff, to collect on her account, and that he did collect it, then the defendant was in equity and good conscience under an obligation to pay over the proceeds of such note to the plaintiff.

No. 1668. Decided November 7, 1906.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 46,264, entered upon a verdict for plaintiff in an action for money had and received. Affirmed.

Mr. Henry E. Davis for the appellant.

Mr. W. W. Millan and Mr. R. E. L. Smith for the appellee.

Mr. Justice McCOMAS delivered the opinion of the Court:

The plaintiff, Lillian Pike Roome, wife of William O. Roome, sued the defendant, Oliver R. Harr, in the first count, for money had and received by the defendant for the use of the plaintiff, the money being her sole and sepa-

rate estate, and the proceeds from the payment of a promissory note for \$6,000 made by one Lereux, dated June 7, 1901, and payable four months after date, with interest from maturity, which said sum was collected by the defendant for the plaintiff but not paid to her. In the second count the plaintiff sued for other money had and received by defendant for the use of the plaintiff.

At the trial the plaintiff introduced evidence tending to show that she was the owner of the note described in the declaration; that the note had been given to the defendant to be collected on her account, and that on July 25, 1902, the defendant had collected \$5,700 on account of the note and had paid no part thereof to her. The defendant introduced evidence tending to show that he had not received this note for collection on account of the plaintiff, but that he had purchased it in the open market and paid for it.

The defendant, who is the appellant here, asked the following instruction: "In order to render a verdict for the plaintiff, the jury must find from the evidence, first, that the certain note described in the declaration, at the time it came into the defendant's possession, was the property of the plaintiff; secondly, that the defendant received the said note for collection on the plaintiff's account; and thirdly, that the defendant collected the same on the plaintiff's account; and the burden is upon the plaintiff to establish each and all of the said facts by a preponderance of evidence; and, unless the jury find each of the said facts so to be established, the verdict must be for the defendant." The court, after striking out the words in the instruction here printed in italics, granted the instruction. Later the court gave its general charge to the jury, and the defendant excepted to the following: "The special instruction read by counsel for the defendant is the law of the case in connection with the general charge; the logic of it is that when one claims the proceeds of a note from another he must show that he had title to the proceeds, by showing that he owned the note from which the proceeds came. Upon this point the defense urged by the defendant is a two-fold proposition; first, he urges, 'you do not show that you bought the note from the bank;' second, 'I show that you have no title to the note, by proving that I bought it myself from Mr. Pratt.' Now, if you choose to do so, it would be quite appropriate to determine the second proposition first in the order of your deliberations; for, if you find that the defendant bought the note from Pratt, as he testified, that at once entitles him to your verdict."

It appears that the court in charging the jury further said: "Before you can render a verdict for the plaintiff, the plaintiff must prove, by a preponderance of the evidence, every element which is essential to her recovery. By this phrase, 'preponderance of the evidence,' the law does not mean to indicate any particular degree of certainty to which the proof must go; it simply means that the evidence in favor of the plaintiff must, to your minds, be more weighty and more satisfactory than the evidence in favor of the defendant upon the same point." The verdict was for the plaintiff, and the defendant appealed.

Under the court's instruction, the jury found that the note described in the declaration was the property of the plaintiff when it came into the defendant's possession, and the defendant received the note for collection on the plaintiff's account and the defendant collected it. The court instructed the jury that before they found for the plaintiff, they must find these facts to have been proven by a preponderance of evidence. If the plaintiff so gave her note to the defendant to collect for her, such money so collected, when received, was the money of the plaintiff claiming it and was received for her use. There was such privity of contract between the plaintiff and her agent, entrusted by her with a note belonging to her, to collect the money on her account, as would support this action for money had and received for the plaintiff's use. Such privity is to be implied from such a transaction. The plaintiff ought to recover such money, and the defendant should, in equity, refund it.

The count for money had and received may in general be proved by any legal evidence showing that the defendant has received or obtained possession of the money of the plaintiff, which, in equity and good conscience, he ought to pay over to the plaintiff, and this count may be supported by evidence in regard to things treated as money; a promissory note, for instance. See 2 Greenleaf on Evidence, sections 117, 118.

At the trial the learned justice correctly concluded that when he told the jury they must find that the note was the property of the plaintiff, and that the defendant received it to collect the same on her account, and the defendant did collect it, the defendant was in equity and good conscience under an obligation to pay over such money to the plaintiff. We will not review the cases relied on by the appellant, which hold that the count for money had and received required privity of contract, express or implied, between the parties to the action, and that otherwise the action can not be sustained, because we think in this case the court's instruction required the jury to find that the money was the plaintiff's money and that there was such privity, and they did so determine. In our opinion the court did not err in modifying the instruction asked by the appellant.

We find no error in the part of the general charge contained in the record. The court told the jury that before they could render a verdict for the plaintiff the plaintiff must prove by a preponderance of the evidence the essential matters clearly stated in the instruction granted on behalf of the defendant. The defendant had offered evidence to show that he had purchased the note described in the declaration in the open market and had paid for the same, and that he had not received the note for collection on account of the plaintiff. The court said: "That when one claims the proceeds of a note from another he must show that he had title to the proceeds by showing that he owned the note from which the proceeds came." The court in speaking of the special instruction in behalf of the defendant added that the defense was twofold; first, that the plaintiff did not show that she bought the note; second, that the defendant had shown that the plaintiff had no title to the

note by proving that the defendant had bought it from one Pratt. This instruction merely imported that the jury might shorten their deliberations if they found the note in controversy belonged to the defendant. The court had carefully instructed the jury as to every element necessary to be proved before they could give a verdict for the plaintiff and had cautioned them that all these elements must be proved by a preponderance of the evidence. Now, again the court cautioned them that the burden of proof of these essential elements was on the plaintiff. In our opinion there is no inconsistency between the charge of the court and the special instruction granted on behalf of the defendant; nor did the charge mislead the jury as to the burden of proof. The instructions taken together were consistent and harmonious, and advised the jury that of course if the note belonged to the defendant the verdict must be for him, and before they could render a verdict for the plaintiff they must believe by a preponderance of the evidence that the note was the plaintiff's, received by the defendant to be collected by him for her use and that he collected it, and in such case the money was her money and the defendant must refund it.

The judgment in this case must be affirmed with costs, and it is so ordered.

#### Opinionativeness in Advocacy.

[New York Law Journal.]

On October 5, 1906, we treated of "Personal Opinions of Advocates," our remarks being called forth by the opinion of the Supreme Court of California, in *People, &c., v. Weber*, 86 Pac., 671. We cited authorities and summarized some of the reasons why the expression of an advocate's personal convictions to the court or jury is improper. A cognate theme is suggested by a passage from the Memorial of James C. Carter, delivered before the Association of the Bar of the city of New York by Hon. Joseph H. Choate, and included in the Year Book of Annual Reports, etc., of that association for 1906. Mr. Choate pays an enthusiastic tribute to Mr. Carter's great qualities and achievements, and his treatment of one phase of Mr. Carter's mentality is, therefore, only the more striking. Mr. Choate remarks:

"He had a unique habit when he embarked in a cause of first convincing himself of its justice before he undertook to convince court, or jury, or adversary. He was very far from limiting himself to causes that he thought he could win, or to such as were sound in law or right in fact. No genuine advocate that I know of has ever done that. He recognized and maintained the true relation of the advocate to the courts and the community, that it is a strictly professional relation, and that either side of any cause that a court may hear the advocate may properly maintain. For him newspaper clamor had no terrors. He realized that the newspaper is accuser, judge and executioner, all in one, but for all that he could and did maintain the unpopular side of a controversy with the same zeal and fidelity as if the whole press were backing his client's claims. As his fame increased he was called, like the leading physicians, into the most grave and critical cases—and I have no doubt that he lost in the long run more



cases than he won. But having once undertaken the conduct of a case he made a careful study of it to try to build upon the facts a theory consistent with his own sense of right and justice, which he might fairly and earnestly present to the favorable consideration of the court—and in this he generally succeeded—and having once convinced himself he could apply all the clearness, force and earnestness of which he was master to convince the tribunal, whether court or jury.

"He had such reliance on his own judgment and confidence in his own opinion, that when he had once found the theory satisfactory to his own mind on which he ought to present the cause, he never changed or departed from it, no matter what arguments the other side might present, or what decisions the court might make as the cause progressed; and even when the court of last resort had pronounced against him, he bowed to the law which the court by reason of its power had declared, but still maintained the theory which by the power of his reason he had evolved in the case. This forensic habit often gave to his weaker adversaries, who could tack and trim their sails as the judicial breezes changed, an apparent advantage. He would present his case on the first and second appeal more strongly and more forcibly, of course, but it was always the same view of the same case, and we knew exactly where and how we should have to strike to meet it. This absolute reliance on his own judgment sometimes led him to underrate the force of his opponent's position. He regarded and treated the propositions of his adversary as 'notions,' and was surprised and indignant when they commanded the approval of the court.

"In another respect, also, he sometimes in the arena exposed to his adversary a vulnerable flank. So masterly was his independence of mind and character that he was not always willing to admit or to recognize the binding force of precedents, however numerous, which failed to run the gantlet of his own reasoning powers. One of his favorite maxims was that nothing was finally decided until it was decided right, and so no amount of so-called authorities was sufficient to dissuade him from maintaining the contrary view."

It is not improper that an advocate should from the commencement of his connection with a case begin the construction of a tentative theory upon which he may hope to succeed. It is, however, most unfortunate if such theory be suffered to become anything but tentative. A lawyer's preliminary conception of a controversy, gathered from the statements of his own client, no matter how frank the latter may strive to be, can not escape being one-sided and incomprehensive. An advocate should, therefore, strive to preserve a judicial attitude so as to be able to modify or reconstruct his theory as unexpected developments occur. Of course, with a man of Mr. Carter's immense ability and industry, the insight into probabilities of future disclosure, aided by indefatigable research into all possible sources of ascertaining the facts and the law, rendered any preliminary theory that he might frame a very formidable plan of campaign. Nevertheless, the arrogation of infallibility and the indisposition to shift ground

under stress of circumstances must have been even to him a serious handicap. An advocate's theory should always be to an extent flexible and entertained without obstinacy or pride. The habit of opinionativeness may be even a more serious vice than the disposition to express and emphasize one's personal opinion.

**Contracts—Intention of Parties.**—While the form of a contract should be considered as expressive of the intention of the parties, yet when form and substance conflict, the latter controls. *Wilson v. Wilson*, (Mo.), 92 S. W. Rep., 145.

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### RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

### Legal Notices.

#### FIRST INSERTION.

W. H. Marlow, Solicitor

In the Supreme Court of the District of Columbia.

Clara Herold, Complainant, v. Oscar W. Gardner et al., Defendants. Equity, No. 28,177.

Walter H. Marlow, Jr., the trustee herein, having reported sale at public auction of that part of lot ten, square eight hundred and forty-six, in the city of Washington, District of Columbia, beginning for the same at a point ninety feet south of the northwest corner of said square and running thence south thirty feet; thence east ninety-two feet and one inch; thence north thirty feet, and thence west ninety-two feet and one inch to place of beginning, to Clara Herold for twenty-nine hundred and fifty dollars, it is, this 2d day of November, A. D. 1906, ordered and decreed that the said sale be, and it is hereby, finally ratified and confirmed, unless cause to the contrary be shown on or before December 3d, 1906. Provided a copy of this order be published once a week for three successive weeks before said last-mentioned day in The Washington Law Reporter. ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by R. F. Belew, Asst. Clerk. 45-St

## Legal Notices.

W. H. Sholes and Reginald S. Huldekoper, Solicitors  
In the Supreme Court of the District of Columbia,  
Holding an Equity Court.

Charles M. Woolf et al., Complainants, v. The Unknown Heirs, Devisees, and Allenees of John Ray and Sarah Ray, Deceased, et al., Defendants.  
In Equity, No. 26,595.

The object of this suit is to declare title by adverse possession in the trustees herein of certain land and premises, situate in the county of Washington, in the District of Columbia, and known and distinguished as all that portion of certain tracts of land situate in said District of Columbia and known as "John and Mary's" and "Trouble Ended," and otherwise known as "Tucker's Farm," and described as follows: "Beginning at a bound stone on the north side of the road from Bladensburg at the end of the division line, between Enoch Tucker's land and that of N. Queen's heirs, and running with said division line north twenty and one-half (20½) degrees, west one hundred and thirteen (113) perches to the bound stone on the south side of the road from Rock Creek Church; thence east six and sixty-one one-hundredths (661-100) perches with said road; thence north seventy and one-half degrees (70½), east fourteen and eight one-hundredths (148-100) perches; thence north eighty-five and three-fourth (85¾) degrees, east nine and fifth-two one-hundredths (952-100) perches; thence south eighty-two and one-half (82½) degrees, east seventy-four and four one-hundredths (744-100) perches with the said road to the Sargent Road; thence with Sargent Road south seven and one-half (7½) degrees, east thirty-seven and seventy-six one-hundredths (3776-100) perches to a stone on the north side of the first mentioned road, and thence with said road south forty-nix (46) and one-half (½) degrees, west ninety-three and sixty-four one-hundredths (9364-100) perches to the beginning, containing about forty-four (44) acres, two (2) rods and ten (10) perches, and being the same land conveyed by deed from James G. Payne, trustee, to Louis D. Means and recorded among the land records of the District of Columbia in Liber 1159, at folio 167 et seq., except nine thousand three hundred and forty-seven and fifty-one one-hundredths (9,347.51) square feet more or less of said land heretofore conveyed by the said Louis D. Means to William Reison by deed duly recorded among the land records of the said District of Columbia in Liber 1882, at folio 417 et seq., and described by metes and bounds as follows: Beginning at the intersection of the Sargent and Bunker Hill Roads; thence with Bunker Hill Road south forty-seven (47) degrees, west fifty (50) feet; thence north forty-three (43) degrees, west one hundred and fourteen (114) feet and nine (9) inches to a ditch; thence with said ditch north fifty-five (55) degrees, east one hundred and twenty-three (123) feet and seventy-nine one-hundredths (79-100) of a foot to the Sargent Road; thence with said road south six and one-half (6½) degrees, east one hundred and twenty-three (123) feet to the place of beginning." On motion of the complainants, it is, this 7th day of November, A. D. 1906, ordered that the defendants, the unknown heirs, devisees, and allenees of John Ray and Sarah Ray, his wife, deceased; Annie E. Babcock, Campbell Elias Babcock, Orville E. Babcock, Adolph Borie Babcock, or their unknown heirs, devisees, and allenees, cause their appearance to be entered herein on or before the fortieth (40th) day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order, good cause having been shown to the satisfaction of the court; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald. By the Court: ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by R. P. Belew, Ass't. Clerk. 45-3t

Clarence R. Wilson, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Hannah R. Ashton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 5th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 5th day of November, 1906. J. HUBLEY ASHTON, 622 F st. N. W.; ELIZABETH ASHTON WILSON, 1640 21st st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,002. Administration. [Seal.] 45-3t

## Legal Notices.

Thomas Walker, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Isolina Thurston, Deceased.  
No. 18,948. Administration Docket 35.

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a., on said estate, by Mary E. McIntosh, it is ordered, this 5th day of November, A. D. 1906, that George M. Thurston and Frank L. Thurston, and all others concerned, appear in said court on Tuesday, the 11th day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. HARRY M. CLABAUGH, Chief Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 45-3t

[Seal] Cole & Donaldson, Solicitors  
In the Supreme Court of the District of Columbia.  
Oscar Teschner, Plaintiff, v. New England Tonopah Mining Company, Defendant.  
At Law, No. 48,727.

The object of this suit is to recover from the defendant the sum of \$387.50 compensation as an employee of the defendant and disbursements made for defendant by plaintiff, more particularly set out in the declaration in this case, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 5th day of November, 1906, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter and [Seal] The Washington Herald before said day. By the court: WRIGHT Justice. A true copy. Test: J. R. Young, Clerk, by Alf. G. Buhrman, Ass't. Clerk. 45-3t

Millan & Smith, Solicitors  
In the Supreme Court of the District of Columbia,  
John D. W. Moore v. Elizabeth B. Id et al.  
Equity No. 28,511. Docket 59.

The object of this suit is partition by sale of parts of lots five (5) and six (6) in square eleven hundred and ninety-three (1193) in the city of Washington, District of Columbia, and three small islands in the Potomac River in said District, known as the Three Sisters, more fully described in the bill herein, and a statement and settlement of the account of complainant against the estate of John Moore, deceased. On motion of complainant it is, this 3d day of November, A. D. 1906, ordered that the defendants, Mary B. Moore, Kate D. Moore, Nannie B. Moore, Max Hoblitzell, Glen M. Baillie, George M. Moore, Lewis B. Moore, Robert S. Moore, and Loula Willard, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Evening Star and The Washington Law Reporter before said day. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Ass't. Clerk. 45-3t

John L. Cassin and P. H. Marshall, Attorneys  
In the Supreme Court of the District of Columbia,  
Holding an Equity Court.  
Henry G. Bergling et al v. Eleonora Nolte et al.  
Equity No. 28,607.

John L. Cassin and Percival H. Marshall, trustees, having reported to the court the sale of the northern part of lot numbered twenty-six (26) in Naylor and Rothwell's recorded subdivision of square numbered four hundred and twenty-five (425), for nine thousand five hundred and fifty (\$9,550) dollars; it is by the court this 8th day of November, 1906, adjudged, ordered and decreed that said sale be confirmed unless cause to the contrary be shown on or before December 10th, 1906. Provided a copy of this order be published once a week for three weeks in The Washington Law Reporter and The Evening Star before the last mentioned [Seal] day. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Ass't. Clerk. 45-3t

**Legal Notices.****Cole & Donaldson, Attorneys**

In the Supreme Court of the District of Columbia.  
 Samuel J. Harman et al., Plaintiffs, v. New England  
 Tonopah Mining Company, Defendant.

At Law, No. 48,728.

The object of this suit is to recover the sum of \$2,806.28, counsel fees and disbursements claimed of the defendant by the plaintiffs, more particularly set out in the declaration filed in this case, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 5th day of November, 1906, ordered that the defendant appear in this court on or before the fortieth day exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter and The Washington Herald.

[Seal] before said day. By the Court: WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by Alf. G. Buhrman, Asst. Clerk. 45-3t

**Geo. R. Linkins, Attorney**

In the Supreme Court of the District of Columbia,  
 Holding a Probate Court.

In re Will of Katherine Frawley, Deceased.  
 Administration. No. 18,836.

**ORDER OF PUBLICATION.**

Michael J. Frawley having made application to the Supreme Court of the District of Columbia, holding a Probate Court, for probate and record of the last will and testament of said Katherine Frawley, deceased, and for letters of administration de bonis non cum testamento annexo to George R. Linkins, it is, this 7th day of November, A. D. 1906, ordered that Anastasia Kellely, Patrick Frawley, James Frawley, Kate McMahon, Patrick S. Frawley, Mary McMahon, Ann O'Loughlin, John O'Loughlin, Patrick O'Loughlin, and the unknown heirs at law and next of kin of said Katherine Frawley, deceased, and all others concerned, appear in said court on Monday, the 10th day of December, A. D. 1906, at 10 o'clock A. M., and show cause, if any they have, why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star, once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 45-3t

**Jas. Gillin and H. T. Winfield, Attorneys**

In the Supreme Court of the District of Columbia,  
 Frank Fritsch, Plaintiff, v. Elizabeth C. Prall, Defendant.

At Law, No. 48,708. Docket 53.

The object of this suit is to recover the sum of two thousand one hundred fifty-five and eighty-nine one-hundredths (\$2,155.89) dollars, the same being the amount of a judgment rendered against the said Elizabeth C. Prall in favor of the said Frank Fritsch, together with costs and disbursements in relation thereto in the Supreme Court of the State of New York in and for the county of Kings, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 2d day of November, 1906, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before

[Seal] said day. By the Court: JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by Alf. G. Buhrman, Asst. Clerk. 45-3t

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**Legal Notices.****Maurice J. Pierce, Attorney**

Notice is hereby given of the filing of a petition in the Supreme Court of the District of Columbia, on the 1st day of November, 1906, by William Marion Smith, praying a decree changing his name to William Marion Irbysmith, for reasons set forth in said petition. WILLIAM MARION SMITH, 722 Munsey Building, Washington, D. C. 45-3t

**J. A. Maedel, Attorney**

Supreme Court of the District of Columbia,  
 Holding Probate Court.

Estate of Henry Hinke, Deceased.

No. 18,975. Administration Docket—.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Camilla Hinke, it is ordered, this 2d day of November, A. D. 1906, that the unknown heirs at law of the said Henry Hinke, and all others concerned, appear in said court on Monday, the 10th day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] turn day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 45-3t

**SECOND INSERTION.****Barnard & Johnson, Solicitors**

In the Supreme Court of the District of Columbia.

Jennie R. Willoughby, Complainant, v. Edgewood  
 Syndicate et al., Defendants.

No. 24,843, in Equity. Docket 54.

Guy H. Johnson and R. Preston Shealey, trustees, having reported to the court the sale to William M. Mooney of lots numbered one (1) to twenty-five (25), both inclusive, being all of square numbered two (2) in the subdivision known as "Edgewood," in the District of Columbia, as per plat in liber co. No. 7, at folios 98 and 99, of the surveyor's office for said District, containing about 101,000 square feet of ground, more or less, for the price of nine (9) cents per square foot, payable all cash, or subject to a deed of trust for four thousand dollars (\$4,000) and the balance cash. It is, this first day of November, A. D. 1906, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 3d day of December. Provided a copy of this order be published once a week for three (3) successive weeks before said last-mentioned day in The

[Seal.] Washington Law Reporter and Evening Star. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. 44-3t

**S. Herbert Giesy, Solicitor**

In the Supreme Court of the District of Columbia.

Bertha C. Wilcox, Plaintiff, vs. Samuel D. Cruttenden, Henry E. Stone, Nellie Field, et vir; Edward E. Field, Sarah Hull, Edward A. Chittenden, Jeanette Crittenden, Benjamin Rossiter, John Rossiter, Adeline Rossiter, Frances Rossiter, Anna Rossiter, Lois R. Foote, Mary R. Newton, et vir; Arthur S. Newton, Duane J. Kelsey, Ida B. Billman, et vir; Ira Billman, Gertrude E. Stevens, et vir; A. B. Stevens, Martha L. Coward, Curtis Wilcox, Kate Wilson, Curtis A. Hall, Defendants.

In Equity, No. 28,605. Doc. 59.

The object of this suit is to sell lot eight (8), in square four hundred and three (403), improved by houses 806 and 808 K street N. W., Washington, D. C., and from the proceeds to pay the creditors of August C. Wilcox, deceased, their claims and his widow an allowance in lieu of dower, and the tenants in common of the heirs of said Wilcox their respective proportions of such proceeds. On motion of the complainant, it is, this 29th day of October, A. D. 1906, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order in The Washington Post and The Law Reporter; otherwise the cause will be proceeded with as in case of default. By the Court: ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by R. P. Belew, Asst. Clerk. 44-3t

[Seal] in case of default. By the Court: ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by R. P. Belew, Asst. Clerk. 44-3t

## Legal Notices.

[Filed November 1, 1906.]

**A. Leftwich Sinclair, Attorney**

In the Supreme Court of the District of Columbia, Holding a Special Term as a District Court of the United States for the District of Columbia.

In the Matter of the Payment of Damages Resulting to Adjacent Property From Changes in the Grades of Streets, Avenues, and Alleys Authorized by the Act of Congress Approved February 28, 1903, Relating to the Construction of a Union Railroad Station in the District of Columbia.

District Court No. 671.

Notice is hereby given that we, the undersigned, having been designated and appointed by the Supreme Court of the District of Columbia, holding a special term as a United States District Court for the District of Columbia, as a commission to appraise the damages resulting to adjacent property from changes in the grades of streets, avenues, and alleys authorized by the act of Congress approved February 28, 1903, relating to the construction of a union railroad station in the District of Columbia, will meet at 10 30 o'clock A. M., on Wednesday, the 13th day of December, A. D. 1906, at the United States Court House (City Hall), in the District of Columbia, in a room to be assigned us by the United States Marshal for said District, for the purpose of viewing the property affected by the changes of the grades of the following-named streets, avenues, and alleys, and hearing testimony touching the damages resulting to real property from said changes of grade, in accordance with the terms and provisions of the act of Congress approved April 22, 1904, entitled "An act to provide for payment of damages on account of changes due to construction of the Union Station, District of Columbia," to wit: Second street northeast, Third street northeast, and K street northeast, around square numbered seven hundred and fifty (750), and the alleys and minor street (Parker street) in said square; Delaware avenue and Second street northeast, around square numbered seven hundred and forty-eight (748); and Third street northeast, between L and M streets. All owners of real property damaged by the changes in the grades of said streets, avenues, or alleys will file a petition with us, in this cause, signed and sworn to, for an allowance of damages within sixty (60) days after the said 12th day of December, A. D. 1906. The aforesaid act of Congress approved April 22, 1904, provides that upon the failure of any such owner to thus present his claim, within said period, his right to do so shall cease and determine. CHARLES A. BAKER, GEORGE W. MOSS, GEORGE

[Seal] SPHANSY, Commissioner to Appraise Damages. A true copy. Test. J. R. YOUNG, Clerk, by T. E. Cunningham, Asst. Clerk.

nov. 2, 9, 16, 23, 30; dec. 7.

**Wm. A. McKenney, Attorney**

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Willie Jane Bestor, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 29th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 31st day of October, 1906. AMERICAN SECURITY AND TRUST CO., by James F. Hood, Secretary; NORMAN BESTOR, The Woodley, Wash., D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,888. Administration. [Seal.] 44-St

**Howard Boyd, Attorney**

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Katherine Kirby, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of November, 1906. MARY F. HEIDE, 512 7th st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,878. Administration. [Seal.] 44-St

## Legal Notices.

**J. B. Horgan, Attorney**

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Thomas Yates, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 29th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of October, 1906. JAMES B. HORGAN, 452 D st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,902. Administration. [Seal.] 44-St

**Conrad H. Syme, Attorney**

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Joseph Henry Krull, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of October, 1906. HONORA KRULL, 1245 6th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,974. Administration. [Seal.] 44-St

**W. H. Sholes, Attorney**

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Lewis E. Duvall, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of October, 1906. ELLEN C. DUVAL, 474 E st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,969. Administration. [Seal.] 44-St

**Arthur Peter, Attorney**

In the Supreme Court of the District of Columbia. Katherine W. Guy vs. Dan Dorsey Guy and Ann Allen, alias Nan Allen.

No. 26,538. Equity Dec. —

The object of this suit is to obtain an absolute divorce upon the ground of adultery. On motion of the complainant, it is, this 24th day of October, 1906, ordered that the defendant, Ann Allen, alias Nan Allen, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post before said day. HARRY M. CLA-BAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 44-St

**Wm. A. McKenney, Attorney**

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Eleanor A. H. McGruder, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscriber, on or before the 25th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of October, 1906. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,966. Administration. [Seal.] 44-St

**Legal Notices.****Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscribers, who were by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Robert E. Sullivan, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 26th day of November, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 30th day of October, 1906. DENNIS J. O'LEARY, JOHN D. COUGHLIN. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,137. Administration. [Seal.] 44-31

**John B. Lerner, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Adolphe Berger, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 19th day of November, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 30th day of October, 1906. THE WASHINGTON LOAN AND TRUST COMPANY, by Frederick Elcheiberger, Trust Officer, by John B. Lerner, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,223. Administration. [Seal.] 44-31

**Wm. A. McKenney, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John H. Elliott, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of October, 1906. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,433. Administration. [Seal.] 44-31

**THIRD INSERTION.**

William K. Quinter, Worthington, Heald & Fraley,  
Attorneys

**Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the State of Michigan, has obtained from the Probate Court of the District of Columbia ancillary letters of administration on the estate of Henry W. Seymour, late of Saute Ste. Marie, Michigan, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscriber, on or before the 20th day of August, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of October, 1906. HARRIET G. SEYMOUR, 1917 Kalorama Road. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,363. Admn. [Seal.] 43-31

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W.

**Legal Notices.****Jas. D. Sullivan, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of William J. Harrington, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 25th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of October, 1906. PATRICK F. HARRINGTON, 2380 Brightwood ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,983. Administration. [Seal.] 43-31

[Filed October 22, 1906.]

**A. Leftwich Sinclair, Attorney  
In the Supreme Court of the District of Columbia,  
Holding a Special Term as a District Court of the United  
States for the District of Columbia.**

In the Matter of the Payment of Damages Resulting to Adjacent Property from Changes in the Grade of Streets, Avenues, and Alleys Authorized by the Act of Congress Approved February 12, 1901, Relative to the Elimination of Grade Crossings on the Line of the Baltimore and Potomac Railroad Company, in the District of Columbia. District Court. No. 671.

Notice is hereby given that we, the undersigned, having been designated and appointed by the Supreme Court of the District of Columbia, holding a special term as a United States District Court for the District of Columbia, as a commission to appraise the damages resulting to adjacent property from changes of the grades of streets, avenues, and alleys authorized by the act of Congress approved February 12, 1901, relative to the elimination of grade crossings on the line of the Baltimore and Potomac Railroad Company in the District of Columbia, will meet at 10.30 o'clock A. M., on Friday, the 30th day of November, A. D. 1906, at the United States Court House (City Hall), in said District, in a room to be assigned us by the United States Marshal for said District, for the purpose of viewing the property affected by the changes in the grades of the following-named streets, and hearing testimony touching the damages resulting to real property from said changes of grades, pursuant to the terms and provisions of an act of Congress approved June 29, 1906, entitled "An act to provide for payment of damages on account of changes of grade due to the elimination of grade crossings on the line of the Philadelphia, Baltimore and Washington Railroad Company," to wit: I street S. E., between 5th street and Virginia avenue; I street S. E., between 6th and 7th streets; K street S. E., between 6th and 7th streets; K street S. E., between 7th street and Virginia avenue; 6th street S. E., between G and I streets; 6th street S. E., between Virginia avenue and K street; Virginia avenue S. E., between 5th and 6th streets; Virginia avenue S. E., between 6th and 7th streets; Virginia avenue S. E., between 7th and 8th streets; Virginia avenue S. E., between 2d and 3d streets; H street S. E., between 1st and 2d streets. All owners of real property damaged by the changes in the grades of said streets will file a petition with us, in this cause, signed and sworn to, for an allowance of damages, within twelve months after the said 30th day of November, A. D. 1906. The aforesaid act of Congress approved June 29, 1906, provides that upon the failure of any such owner to thus present his claim within said period, his right to do so shall cease and determine. CHARLES A. BAKER, GEORGE W. MOSS, GEORGE SPRANNY, Commission to Appraise Damages. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. oct. 26, nov. 2, 9, 16, 23

**Alex. H. Bell, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John Fraas, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of October, 1906. FRANK P. MADIGAN, 11th and D sts. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,965. Administration. [Seal.] 43-31

**Legal Notices.****R. Ross Perry & Son, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscribers, who were by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **JAMES W. ORME**, deceased, have with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed **Monday, the 13th day of November, 1906, at 10 o'clock A. M.**, as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 24th day of October, 1906. **WILLIAM B. ORME, CHARLES B. BAILEY**. By **R. Ross Perry & Son, Attorneys**. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,301. Administration. [Seal.] 43-St

**Barnard & Johnson, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia ancillary letters testamentary on the estate of **Georgia H. Williams**, late of the State of Connecticut, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of October, 1906. **J. FLOYD JOHNSTON**, 16 and 18 Exchange Place, New York, N. Y. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,958. Administration. [Seal.] 43-St

**Mason N. Richardson, Attorney  
Supreme Court of the District of Columbia  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Eliza B. Hirst**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of October, 1906. **HOMER T. HIRST**, 1628 Swan St. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,968. Administration. [Seal.] 43-St

**Lester & Price, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of **Charles G. Zange**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of October, 1906. **MARY M. E. STENZ**, 923 9th St. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,978. Administration. [Seal.] 43-St

**George C. Gertman, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of **Apollonia Hutchinson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 25th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of October, 1906. **JACOB L. HUTCHINGS**, 221 2d St. S. E. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,998. Administration. [Seal.] 43-St

**Legal Notices.****John B. Lerner, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.****Estate of Susan W. Fowler, Deceased.****No. 13,962. Administration Docket—**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate by **Philip Lerner**, the executor named therein, it is ordered, this 24th day of October, A. D. 1906, that **Mary W. North**, **Harold Havens**, both of lawful age and residents of New York City, State of New York, and all others concerned, appear in said court on **Monday, the 26th day of November, A. D. 1906, at 10 o'clock A. M.**, to show cause why such application should not be granted. Let notice hereof be published in *The Washington Law Reporter* and *Washington Post* once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD**, Justice. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 43-St

**Crothwaite & Colladay and Harry F. Lerch, Solicitors  
In the Supreme Court of the District of Columbia,  
Thomas O'Neill, Trading as O'Neill & Company,  
Plaintiff, v. Helen B. Ferrill, Otherwise Known  
as Helen B. Gilbertson, Defendant.****At Law, No. 48,818.**

The object of this suit is to recover the sum of \$481.52, with interest, according to the particulars of demand attached to the declaration herein, due the plaintiff from the defendant, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 18th day of October, 1906, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in *The Washington Law Reporter* and *The Washington Herald* before [Seal] said day. By the Court: **WRIGHT, Justice**. A true copy. Test: **J. R. Young**, Clerk, by **Alf. G. Buhrman**, Asst. Clerk. 43-St

**FIFTH INSERTION.****E. A. Newman, Solicitor****In the Supreme Court of the District of Columbia.****Claudia M. Moran and Another v. The Unknown Heirs or Devisees of John B. Bernaben, Deceased.  
No. 28,501. Equity Doc. 50.**

The object of this suit is to obtain a decree of the court vesting title by adverse possession in the complainants according to their respective rights in and to all that certain piece or parcel of ground and premises situate in the city of Washington and District of Columbia, and known and distinguished as and being part of original lot 4 in square 428. Beginning for said part at the northwest corner of said lot and running thence east 78.67 feet to the line of the property conveyed to Young by deed recorded in liber No. 1721, folio 459, one of the land records of the District of Columbia; thence south with the west line of said property 25.58 feet; thence west 22.47 feet to the line of the property conveyed to the heirs of Martha J. Greer by deed recorded in liber No. 1751, folio 194, of the said land records; thence north 0.95 of a foot, and thence southwesterly 56.20 feet, more or less, to the line of 8th street west, and thence north along the line of said 8th street 27.58 feet to the said place of beginning. On motion of the complainants, it is this 7th day of September, 1906, ordered that the defendants, the unknown heirs or devisees of John B. Bernaben, deceased, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three months in *The Washington Law Reporter* and *The Washington Post* and *The Evening Star* before said day. **ASHLEY M. GOULD**, Justice. True copy. Test: **J. R. Young**, Clerk, by **J. W. Latimer** Asst. Clerk. sept. 14, 21; oct. 12, 19; nov. 9, 16

Justice blanks of every description for sale at this office.

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WASHINGTON, D. C. - - - NOVEMBER 16, 1906

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### Failure to Support Minor Child—Jurisdiction of Juvenile Court.

In the case of *United States v. Moss*, recently decided by Mr. Justice Barnard, holding Criminal Court No. 2, the proceeding was by certiorari to remove into the Supreme Court of the District a cause depending in the Juvenile Court against the petitioner. The writ was asked on the ground that the Supreme Court had concurrent jurisdiction with the Juvenile Court of the offense charged, which was the failure of the petitioner to provide for a minor child, under the provisions of the act of March 3, 1901, making such failure a misdemeanor. It was also contended by the petitioner that, even if the Supreme Court did not have concurrent jurisdiction as alleged in the petition, the act of 1901 was repealed by implication by the act of March 23, 1906, making it a misdemeanor for one to wilfully abandon or neglect to provide for the support of his wife or minor children under the age of 16 years who are in destitute circumstances. Mr. Justice Barnard, in dismissing the petition, held that writ would not lie on the ground of concurrent jurisdiction, and expressed the opinion that the act of 1906 did not repeal, either expressly or by implication, the act of 1901, both being allowed to

stand, the one as a supplement to the other. The opinion will be reported in full in a subsequent issue.

### Evidence of Experiments.

An exceedingly interesting ruling on the question of the admissibility of evidence of experiments is contained in *Tackman v. Brotherhood of American Yeomen*, 106 N. W. Rep., 350. The action was on a mutual benefit certificate, and the association defended on the ground that the insured had committed suicide. The only facts shown were that deceased went to his barn to get his team, and in about an hour was found dead, suspended by the neck from a tie strap attached to a bridle hanging on a peg where deceased usually hung his harness. At the trial a witness testified that he had hung a bridle with a tie strap attached on the peg, throwing the tie strap over the peg in the usual manner, so as to leave it hanging down, and by a series of experiments found that, if he walked towards the bridle and stumbled and fell with his head in a loop formed by the strap, it was drawn around his neck in such a way that it caught or drew over itself, and would have choked him had he not regained his balance. The witness was a man of about the same weight and height as deceased, and a number of experiments showed that the result mentioned ensued about three times out of four. This evidence was held to be admissible as throwing light upon the manner in which the death might have occurred.

### Carriers—Measure of Damages for Loss of Manuscript.

In the case of *Southern Express Company v. Owens*, 41 South. Rep., 752, an interesting question arose as to how damages were to be determined for the loss of a manuscript in the absence of evidence as to a market value. The manuscript was a school-book history on a subject on which there was no text-book. The Supreme Court of Alabama determined that it was proper to permit the plaintiff to testify as to the amount of time he had employed in the preparation of the manuscript and what he considered it worth, the court adding that where an article is so unusual in character that the market value can not be determined damages must be ascertained in some rational way.

**Evidence.**—A despatcher's record of the arrival and departure of trains is held, in *Louisville & N. R. Co. v. Daniel* (Ky.), 3 L. R. A. (N. S.), 1190, to be admissible to show the location of a train at the time of an alleged accident.



# Court of Appeals of the District of Columbia.

THE FIFTH CONGREGATIONAL CHURCH,  
OF WASHINGTON, D. C., APPELLANT,

v.

ROBERT S. BRIGHT, TRUSTEE.

THE FIFTH CONGREGATIONAL CHURCH,  
OF WASHINGTON, D. C., APPELLANT,

v.

ROBERT S. BRIGHT, TRUSTEE, ET AL.

EQUITY; PRACTICE; DEEDS OF TRUST; RELEASE  
AGENCY; FRAUD OF AGENT.

1. A mere decree for the payment of costs, being a matter of discretion with the trial court, no appeal will lie therefrom; but if an appeal be taken from an entire decree, the question of costs, as a part of that decree, will be taken notice of as incidentally connected therewith.
2. Where one of two innocent persons must suffer a loss occasioned by the wrongful act of a third person, the one who by his negligence or inadvertence has placed it in the power of such third person to perpetrate the wrong must bear the loss; following *Carusi v. Savary*, 28 Wash. Law Rep., 574.
3. A note secured by deed of trust was by its terms made payable at the office of A, through whom the loan had been made. Shortly before its maturity the holder sent it to A for collection or to have it extended. S, then owner of the property, paid the amount of the note to A, who joined with his co-trustee, to whom he exhibited what purported to be the original note duly cancelled, in a release of the property. A, however, returned to the holder what purported to be the genuine note, with an extension of time of payment indorsed thereon. Either this note or the cancelled note exhibited to his co-trustee was a forgery. In a proceeding by the holder to have the release set aside and the deed of trust foreclosed, held, reversing the trial court, that A, in receiving payment of the note, acted as the agent of the holder; that S, finding the note in the possession of A, at whose office it was made payable, was justified in assuming that A had authority to receive payment, and was not negligent in paying the note by a check drawn to the order of A; that his payment to A discharged him from further liability on the note, and the trust was therefore properly released.

Nos. 1671 and 1674. Decided November 7, 1906.

APPEAL by intervenor from a decree of the Supreme Court of the District of Columbia, in Equity, No. 23,772, setting aside a release of a deed of trust and ordering a sale of the property. Reversed.

*Mr. W. C. Sullivan* for the appellant.

*Mr. S. Herbert Giesy* for the appellees.

Mr. Justice ROBB delivered the opinion of the Court:

No. 1671 is an appeal from a decree of the Supreme Court of the District of Columbia setting aside a release of a deed of trust to appellant's predecessor in title, and foreclosing the trust, and ordering a sale of the property.

No. 1674 is a special appeal from the order of the Supreme Court of the District imposing upon appellant, as intervening petitioner below, at the time of granting its petition to intervene, the payment of one-half of the costs at that time incurred.

The facts are these:

On or about January 6, 1898, Miss Louisa D. Lovett, the adopted daughter and amanuensis of Charlotte Bostwick, of Philadelphia, trustee under the will of Emma L. Breese, deceased, sent \$8,000 on the account of Mrs. Bostwick as

trustee to E. Welsh Ashford, "Financial Agent," real estate and loan broker, with offices at No. 1410 G street, N. W., Washington, D. C. That there had already been some correspondence between Mrs. Bostwick as trustee as aforesaid, and Ashford, is apparent from the fact that the \$8,000 was actually sent him in the communication of January 6th. This money, according to Ashford's letter of acknowledgment dated January 11, 1898, was to be invested by him for Mrs. Bostwick as trustee. At about this time Loring Chappel, a builder of Washington, D. C., applied to William K. Ellis, a local real estate and loan broker, for a loan. Ellis, not having any clients who then desired to loan money, applied to Ashford who agreed to make the loan. Thereupon on January 7, 1898, Oella and Loring Chappel, her husband, executed a deed of trust, in which the said E. Welsh Ashford and the said William K. Ellis were named as trustees to secure the payment of four promissory notes among which was one in the sum of \$2,000 and one in the sum of \$400 secured on lot 64 in Oella Chappel's subdivision of lots in square 911 as per plat recorded in liber 21, folio 69, of the records of the office of the surveyor of the District of Columbia. Each of these two notes was payable to the order of Edward F. Riggs, a mere accommodation endorser, three years after date with interest at six per centum semi-annually, interest and principal being payable at 1410 G street, N. W., Ashford's office. On January 10, 1898, the day the loan to the Chappels was consummated, Riggs endorsed the note in controversy to Charlotte Bostwick, trustee under the will of Emma L. Breese, deceased, without recourse to him. On the following day, January 11, 1898, Ashford enclosed this note with two others, the three aggregating the \$8,000 previously sent him for investment, to Miss Lovett for Charlotte Bostwick, trustee. On July 13, 1898, the Chappels conveyed lot 64, subject to the encumbrance of \$2,400 represented by the \$2,000 note in suit and the \$400 note to which reference has been made, to Bela N. Seymour, in whose name the equitable title to lot 64 stood when the notes for \$2,000 and \$400 respectively became due on January 7, 1901. Charlotte Bostwick, the original trustee, died on May 6, 1899, and on January 23, 1900, Robert S. Bright, an attorney of Philadelphia, was appointed to succeed her as trustee. Bright had previously represented Mrs. Bostwick as attorney in fact in connection with her duties as trustee. It appears that he also represented other estates, either in the capacity of attorney or as trustee, and that prior to January, 1898, and during the period covered in this controversy he had several conversations with Ashford either in Washington or in Philadelphia, and frequently corresponded with him in reference to this transaction and others. On January 2, 1900, in a letter to Ashford, Bright said: "I also received your check for \$13.50, the int. on Colver note until Dec. 7, 1900. I also note what you say about the Smith-Arnott note for \$1,750 which you still retain. I trust there will not be much more delay about this."

On June 29, 1900, Bright wrote to Ashford, and in the letter said: "When the Driver note is paid off you can reinvest the principal in any good safe loan paying good interest."

On October 9, 1900, Bright wrote Ashford, acknowledging receipt of a "check for \$5,600.83, being principal of two notes of Charles R. Pickford for \$2,700 each, with interest to Sept. 14th, 1900."

On December 22, 1900, Bright again wrote Ashford about the Colver and Smith-Arnott notes, saying: "What about the Colver and Smith-Arnott notes *which you have had now for some months for adjustment.*"

On January 2, 1901, five days prior to the maturity of the note in suit, Ashford wrote Bright, and enclosed "certified check for \$1,840.40 to pay note of Alice A. Smith and Cath. A. Arnott, \$1,750, with interest at 6 per cent from Feb. 23rd, 1900, to Jan. 2d, 1901." Ashford, in this letter, further says: "*I believe there is in your custody a note of Oella and Loring Chappel, \$2,000, secured by deed of trust on lot 64, square 911, maturing Jan. 7th. Will you kindly register this note and accompanying papers as it will be paid at maturity.*"

On the following day, January 3, 1901, four days before the maturity of the note in controversy, Bright wrote Ashford as follows:

"DEAR SIR: Your letter with check to pay Smith Arnott note and interest to date (\$1,840.40) was received. . . . I also enclose herewith the Oella and Loring Chappel note for \$2,000, which I am sorry is to be paid off as you write. Interest is paid on this note to July 7, 1900, making 6 months interest due July 7th, 1901 (1901). I have no title papers with this note. Most of the notes which I hold have title papers, but some have not and this is one of those which has not. I hope the \$2,400 and \$2,100 notes will not be paid off. I shall be glad to extend the enclosed Chappel note at 5 per cent, as it is held in an estate in which the rate of interest does not make so much difference provided the security is good."

On January 4, 1901, Ashford acknowledged the receipt of the \$2,000 Chappel note as follows: "I have your favor of Jan. 3d, with \$2,000, note of Oella and Loring Chappel, secured on subplot 64, square 911, this city, *for payment and remittance.*"

On January 14, 1901, Bright wrote Ashford about certain other loans, and in the letter said: "Is the \$2,000 Chappel note sent you on January 3rd to be paid off or extended? I hope it can be extended as stated in my letter of Jan'y 3rd to you. You now have received three Chappel notes from me, one for \$2,000, one for \$2,100, and one for \$2,400."

On January 5, 1901, Bela N. Seymour, the grantee as aforesaid of the Chappels, handed Ashford a certified check for \$2,060, which represented the principal and interest to January 7, 1901, of the Chappel loan. Ashford, as we have seen, then had this note in his possession with full authority from Bright, the trustee, either to receive payment thereon or to extend it. On January 7, 1901, the day the note became due, the check was paid, and the record shows that Seymour had already paid the \$400 note. Seymour being dead and Ashford having absconded, our knowledge of the facts surrounding these payments must be gained from other sources and circumstances. It appears, however, that Ashford, fully authorized to accept

\*Evidently intended for January.

payment on the note, appeared with a notary at the office of his co-trustee under the deed of trust, Mr. Ellis, for the purpose of executing a release, and exhibited to Mr. Ellis two notes, one for \$2,000 and one for \$400; that Mr. Ellis, whom the record shows to be an exceptionally particular man and to have been familiar with the signature of the Chappels, carefully examined both notes, and observed that each was marked "Paid and Cancelled." Mr. Ellis thereupon joined Ashford in the release set aside by the court below.

No question is made aside from the fraud alleged to have been practiced by Ashford as to the legal sufficiency of this release. The \$400 note, marked as above stated, was found among Mr. Seymour's papers after his death. What became of the \$2,000 note is not known.

On January 15, 1901, Ashford transmitted to Bright the note in controversy with an endorsement thereon extending the time of payment to January 7, 1903, with interest at 5 per centum semi-annually.

On November 4, 1902, Bela N. Seymour conveyed said lot 64 to Edward Parsons Seymour, who in turn on October 1, 1903, conveyed the property to the Fifth Congregational Church of Washington, D. C., the appellant herein, both deeds being of record.

The appellee, the petitioner below, filed his original bill on February 18, 1903, against Oella Chappel, Loring Chappel, E. Welsh Ashford, William K. Ellis, Edward F. Riggs, Bela N. Seymour, and Edward Parsons Seymour, to foreclose the trust and for a sufficient decree against the Chappels. On April 18, 1905, leave was granted to amend the original bill by adding a prayer to cancel the release, and the amended bill was filed April 27, 1905. On April 19 a stipulation was entered into between counsel for the complainant and counsel for Edward Parsons Seymour and counsel for the Chappels and for Mr. Ellis, that the testimony already taken might stand as the testimony under the amended bill.

On May 31, 1905, the court having announced its opinion in favor of appellee, the appellant, the Fifth Congregational Church of Washington, D. C., filed a petition for leave to intervene, alleging, among other things, the conveyance to it of October 1, 1903; that shortly after receiving this deed of conveyance it had applied, through its counsel, to the solicitor for the complainant requesting him to consent to the passage of an order making the church a defendant in the cause "subject to all equities and defenses which might exist against its grantor, the said Edward Parsons Seymour, but said request was denied;" that the church was advised and believed it to be doubtful whether an appeal would be prosecuted by the defendant of record, the said Edward Parsons Seymour, from the decree which was about to be entered against him. On July 13, 1905, before a final decree was entered, the petition of the church for leave to intervene was granted, and it was ordered that the church pay one-half the costs then incurred. A special appeal was perfected and allowed from so much of the order of the court as related to the payment of costs by the church. The decree, on the merits, referred the cause to the auditor to ascertain the amount due on said note under the deed of trust, and

the order confirming the auditor's report was filed February 21, 1906.

On August 4, 1905, the intervenor asked leave to sever from its co-defendants on the ground that they had declined to appeal, and on the same day the order granting the request was made.

The appellee now moves to dismiss the appeal of the church on the ground that it had no right to be heard unless through a supplemental bill. We think appellant was properly permitted to intervene, as the rights of the appellee were in no way prejudiced thereby; neither was there any unnecessary delay on the part of the church in filing its motion to intervene since there was no necessity for intervention so long as its predecessor in title was willing to conduct the defense. The appellee had known for some time that the church was the real party in interest. The mere substitution of the real for the nominal party in interest "subject to all equities and defenses which might exist against its grantor, the said Edward Parsons Seymour", in no way prejudiced the appellee.

The motion to dismiss, therefore, will be denied.

We will next consider the motion to dismiss the special appeal. It appears:

First. That the interest of the intervenor was acquired October 1, 1903.

Second. The suit was defended by counsel for Chappel and Seymour, who were also assisted by counsel for intervenor.

Third. After the purchase by the church, consent to intervene for the protection of its interests was requested of counsel for complainant, and denied.

Fourth. The court announced its opinion on May 18, 1905, in favor of appellee.

Fifth. On May 31, 1905, the petition for intervention was filed, and same granted July 13, 1905, before entry of final decree on that day.

Sixth. On the same day the intervenor noted an appeal from the decree in open court, and bond was fixed.

Seventh. On August 4, 1905, the intervenor asked leave to sever from its co-defendants, who had declined to appeal, and on the same day the order was made.

The special appeal from the order requiring the intervenor to pay costs was presented to this court and allowed May 4, 1906. This appeal now seems to have been unnecessary. It was granted, however, without much inquiry as to its necessity, because the main case was already in the court, and no possible injury could result from granting the special appeal. It further appears that the payment of costs was not made a condition to the leave to intervene, although such an order was sought.

The intervenor was before the court, and the order was made regarding the payment of costs, and is to be regarded as a part of the final decree entered on the same day. A mere decree for the payment of costs, especially in an equity cause, being a matter of discretion with the trial court, no appeal will lie therefrom, but, if an appeal be taken from a whole decree, the question of costs, as a part of that decree, will be taken notice of as incidentally connected therewith when that is the question directly

before the court. *United States v. Brig Malek Adhel*, 2 How., 210, 233; *Insurance Co. v. Canter*, 3 Pet., 107; *Du Bois v. Kirk*, 168 U. S., 58, 67; *Tuohy v. Hanlon*, 18 App., D. C., 225, 230; 29 Wash. Law Rep., 417.

In 2 Howard, the court said: "The matter of costs is not *per se* a proper subject of an appeal, and it can be taken notice of only incidentally, as connected with the principal decree, when the correctness of the latter is directly before the court." The special appeal will, therefore, be dismissed with costs.

The first assignment of error, which it is necessary to notice, relates to the ruling that the note in suit is genuine. While the evidence, as we view it, is not at all convincing on this point, we will assume for the purposes of this opinion that this note is the identical note signed by Oella and Loring Chappel on January 7, 1898.

The third and fourth assignments of error may be considered together, as the third challenges the ruling that Ashford was the agent of Seymour, while the fourth specifies as error the failure of the court to rule that Ashford was the agent of Bright, the appellee.

We think the facts stated clearly indicate for whom Ashford was acting when he received payment on the note. Prior to its maturity Bright sent the note to Ashford, *at whose office it was payable*, with full authority to receive payment thereon, and, of course, to execute a release of the trust. Seymour, the equitable owner of the property covered by the trust, paid Ashford, in whose custody the note then was \$2,060, principal and interest due on the note at maturity. We think, clearly, that Ashford was acting for Bright, and, therefore, his agent. No negligence can be attributed to Seymour, as he was careful to have a sufficient release of the trust executed and recorded. He also procured the cancellation of a \$2,000 note which Ashford undoubtedly represented to be the original and genuine note, and which must have looked like the original because Mr. Ellis, Ashford's co-trustee, who was familiar with the signatures of the Chappels, after careful examination, believed it genuine and joined Ashford in the release.

It was suggested at bar that Seymour should have made his check payable to Bright instead of Ashford. This objection is without merit, for the reason that Seymour would have been within his rights had he made a cash payment to Ashford. Indeed, Ashford might have declined to accept any but a cash payment.

Objection is also made that Seymour did not demand surrender of the note at the time of payment. The only evidence upon which to base this objection is the testimony that the \$400 cancelled note was found among Seymour's papers after his death, but that the \$2,000 cancelled note was not. It is immaterial whether Seymour retained this note or destroyed it. The evidence certainly does not warrant the conclusion that it was left in Ashford's possession. Neither is there any contention that the note in suit is the note marked "Paid and Cancelled," which was exhibited to Mr. Ellis by Ashford. Moreover, Mr. Bright in selecting Ashford as his agent for the collection of this note made the fraud possible, for it is apparent

that Ashford used two notes, one of which must have been a forgery. To obtain the money from Seymour and to procure the signature of his co-trustee to the release, he marked one "Paid and Cancelled," and the other he sent his principal, Mr. Bright, marked "Extended." Throughout the transaction, as above stated, he represented Mr. Bright as Mr. Bright's agent, and, as this court said in *Carnel v. Savary*, 6 App. D. C., 344: 23 Wash. Law Rep., 374:

"The question in this case, as we understand it, is which of two innocent persons should be required to suffer the loss occasioned by the wrongful act of a third person, the one, who, by his negligence or inadvertence, has placed it in the power of such third person to perpetrate the wrong which otherwise would not have been perpetrated, or the one, who, without any negligence on his own part, has been misled by the wrong-doer into a situation into which otherwise he would not have entered. And in the light of modern equity, of the overwhelming mass of judicial decision, and of what seems to us to be the dictate of natural justice, that question in our opinion can admit of but one answer."

Had Bright sent the note to a bank or trust company for collection or extension, notice would have been given Seymour prior to the maturity of the note, and Ashford would not have been in a position to perpetrate the fraud, for, had Seymour made payment to a bank or trust company, the money would have been promptly remitted and Bright's note would have been marked "Paid and Cancelled" instead of "Extended."

As the note was payable at Ashford's office, it was the duty of Seymour, in the absence of directions from Bright to the contrary, to tender payment there, and finding the note in Ashford's possession he had a right to assume that Ashford had authority to receive payment thereon.

In the case of *Williams v. Walker*, 2 Sand. Ch., 325, the court said: "This authority is wholly unlike a general power of a general direction to pay the agent. It rests entirely upon the fact of the possession of the bond. While that possession continued, the payments were justified, even if Mrs. Walker were ignorant of its continuance. Her safety required her on each occasion to look to the bond, the sole evidence then of this special authority; and to see that her payments were properly indorsed. If she chose to pay without this caution, it did not impair the validity of the payment, while the special authority in fact continued." *Megary v. Funtis*, 5 Sanf., 376; *Caldwell v. Evans*, 5 Bush, 380.

In the case of *Doubleday v. Kress*, 60 Barb., 181, the plaintiff held a note of defendant for \$800, and intrusted same to one Murray to present to defendant for payment, which note was not endorsed by plaintiff. Murray presented the note to defendant and received payment in full of principal and interest, and then pretended to plaintiff that he had only received the interest, and afterwards absconded with the \$800. The court sustained the payment made to Murray, and said: "It is well settled that a debtor is authorized to pay to an agent any sum which is due upon a security which

has been intrusted to the agent, by the holder, for the purpose of collecting any part of it. As where the agent has been authorized to receive the interest only, but receives the principal. In fact the authorities go to the extent of holding a payment valid, made to an agent who is merely intrusted with the possession of the security, without the express authority to receive or collect any part of it. The ostensible authority attributed to a party to whom is intrusted an instrument to secure the payment of money, is to receive payment according to its terms. And large sums are constantly paid to parties in possession of such securities, without any other evidence of authority than the bare possession of the security." *Stiger v. Bent*, 111 Ill., 328.

In the case of *Glatt v. Fortman*, 120 Ind., 384, the court held that a bank was the payor's agent when the payor made payment to the bank, the place designated for payment in the note, but based its decision on the fact that the security was not in possession of the bank at the time payment was made; and said that: "The rule upon which the payor is bound to act is that the bank is not authorized to receive payment *unless the note is lodged with it*, for the designation of the place of payment does not bind the payee to present the note at that place," clearly indicating that, if the note had been lodged with the bank at the time of payment, the decision of the court would have been that the bank was the payee's agent.

In the case of *Ward v. Smith*, 7 Wall., 447, Ward executed three bonds which were designated payable at a certain bank. Smith deposited one bond with that bank for collection, and retained the other two. Ward made various payments to the bank on the three bonds, and the court held that the bank acted as the agent of the payee in receiving payment on the one bond which had been lodged with it for collection, and as the agent of the payor or obligor in receiving payments on the other two bonds. Justice Field, in delivering the opinion of the court used the following language: "*When the instrument is lodged with the bank for collection, the bank becomes the agent of the payee or obligee to receive payment.*" In the case at bar only one bond was deposited with the Farmers' Bank. That institution, therefore, was only the agent of the payee for its collection. It had no authority to receive payment on the other two bonds for him or on his account."

*Insurance Co. v. Eldredge*, 102 U. S., 545 (appeal from the Supreme Court of the District of Columbia), cited by appellee, in which the court refused to set aside a deed of release, upon examination will be found not to bear out appellee's contention that the deed of release in suit should be set aside. The facts in that case are very different from those in the case at bar, but in both cases the wrongdoer was the agent of the party seeking to set aside the release. The Insurance Company, through its Washington agent, one Bigelow, placed a loan of \$32,000 secured by deed of trust on certain property in the District, and left with Bigelow the investigation of the title of the security. Bigelow, knowing that his company would take only a first deed of trust on the property and being aware there was a prior deed of trust on the

property and that the prior trustee had executed a release without the notes secured by the trust being paid, nevertheless placed the loan for his company. Suit was brought by the company to set aside this deed of release as a fraud on its rights. The court refused to set aside the release and said: "Where a purchaser (and a mortgagee or trustee of a trust deed stands in the same position), at the time of taking a deed, has information that a prior mortgagee or trustee of a prior deed has released the property from the mortgage or trust, without payment of the notes or their surrender, or express authority from the holder of them, he will take the property subject to any equitable right of the holder of the notes, to secure the payment of which the mortgage or trust was executed. . . . The company, as already stated, must be deemed to have known of the want of power in the trustee to release the property from the Coburn deed."

In the case just cited there was no contention that the notes were paid, but in the case at bar payment was made on the notes, making a stronger reason for the court's refusal in the case at bar than in the cited case. Moreover, the knowledge on the part of the agent of the fraudulent release and his act in procuring same were held to be knowledge and action of his principal, and hence binding upon the company.

The present case differs from the cases cited in that it is not contended that Ashford was not fully authorized to receive payment of the note from Seymour; the contention being that in accepting payment he was Seymour's agent and not Bright's, and that, therefore, Seymour was responsible for the failure to remit to Bright the amount collected. We think this contention is not only disproved by the record, but that it fully and conclusively appears that Ashford was the agent of Bright when he received payment from Seymour, and that, no negligence being attributable to Seymour, his payment to Ashford absolved him from further liability under the note.

It follows that the release of the trust executed by Ashford and Ellis must be sustained.

It is our opinion that the decree of the court below should be reversed including the order requiring the payment of costs, and that the cause be remanded with directions to enter a decree in conformity with this opinion, and it is so ordered. Reversed.

**Corporations.**—A retrospective act changing the remedy to enforce stockholder's liability is held, in *Harrison v. Remington Paper Co.* (O. C. App. 8th C.), 3 L. R. A. (N. S.), 954, to be unconstitutional.

The reduction of preferred stock distributed ratably among its holders is held, in *Roberts v. Roberts-Wicks Co.* (N. Y.), 3 L. R. A. (N. S.), 1034, not to affect the right of a holder to receive from profits subsequently earned the deferred dividends upon the amount of his original holding up to the time of the reduction, where his contract provided that the dividends should be cumulative, deferred dividends to bear interest from the time of their maturity.

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## Supreme Court of the District of Columbia, HOLDING AN EQUITY COURT.

FREDERICK VOGELSANG,

v.

THOMAS F. AMERICA ET AL.

FRAUDULENT CONVEYANCES; CAUSE OF ACTION ARISING EX DELICTO; SEC. 1120, CODE D. C., CONSTRUED; PARTIES.

1. One who has a cause of action against another arising out of the tort of the latter is within the protection afforded by Section 1120 of the Code, providing that conveyances of property made with "intent to hinder, delay, or defraud creditors or other persons having just claims or demands of their lawful suits, damages, or demands, shall be void as against the persons so hindered, delayed, or defrauded," to the extent that he can have set aside a fraudulent conveyance made after the cause of action has accrued but before judgment.
2. Where the defendant, for a nominal consideration, conveyed property to a third person who thereupon conveyed it to the wife of defendant, such third person, being a mere conduit of the title, is not a necessary party to a proceeding to set aside the conveyance as made to defraud the plaintiff.
3. Failure to comply with Equity Rule No. 9 requiring all exhibits referred to and prayed to be read as part of the bill to be filed, is not ground for demurrer.

Equity No. 26,142. Decided November 2, 1906.

HEARING on demurrer to a creditor's bill. Demurrer overruled.

*Mr. Irving Williamson and Mr. Campbell Carrington* for the complainant.

*Mr. A. L. Sinclair and Mr. Chas. F. Benjamin* for the defendants.

*Mr. Justice GOULD* delivered the opinion of the Court:

The questions in this case are presented by a demurrer to a creditor's bill and involve the construction, for the first time, of section 1120 of the Code. This section superseded the statute of 13th Elizabeth C., 5, against fraudulent conveyances. The bill sets forth, in substance, that on March 13, 1906, plaintiff recovered a judgment against defendant, Thomas F. America, and caused execution to be issued thereon, which was returned nulla bona; that said judgment was based on a cause of action which accrued September 14, 1905, suit thereon being entered September 20, 1905. The bill further recites that the defendant America knew, on September 14, 1905, of the aforesaid right of action and between that date and September 20, 1905, was expressly notified that complainant intended at once to institute suit against him thereon; that on September 20, 1905, said America, for the purpose of hindering, delaying, and defrauding the complainant, conveyed premises 711 E Street southeast, in this city, which, subject to a certain deed of trust, he had theretofore owned to one Mitchell for the recited consideration of \$10, and that on the same day Mitchell, for the same recited consideration, conveyed the same property to the defendant, Carrie N. America, who is the wife of defendant, Thomas F. America; that America has no other property or estate whatever. The bill contains the usual prayers.

The first question raised by the demurrer is that complainant, at the time of the conveyance of the property in question, did not belong to that class of persons whom the statute was de-

signed to protect. In other words, that at the date of the transfer, plaintiff was not a creditor "or other person having just claims or demands of their lawful suits, damages or demands." The briefs of counsel for both parties have assumed that the cause of action against America was one arising *ex delicto*. There is nothing on the face of the bill to indicate this fact, and therefore the demurrer might be overruled on that ground. But as it seems conceded that the cause of action which resulted in judgment was a tort, I will dispose of the question whether one who has an action *ex delicto* comes within the protection of section 1120 to the extent that he can have set aside a fraudulent conveyance made after the cause of action has accrued, but before judgment. In other words, is he "a creditor or other person having just claims or demands" against the fraudulent grantor?

Counsel for defendant America cite the following cases as sustaining the proposition, that one having merely a claim for unliquidated damages is not a creditor, and does not come within the protection of this, and similar statutes: *Hill v. Bowman*, 35 Mich., 191; *Meserve v. Dyer*, 4 Maine, 52; *Langford v. Fly*, 7 Humph., 585; *Severs v. Dodson*, 53 N. J. Eq., 636; *Fowler v. Frisbie*, 3 Conn., 324; *Green v. Adams*, 59 Vt., 602; *Jones v. Jones*, 79 Miss., 261; *Ward v. Hollins*, 14 Md., 158; *Ex parte Mercer*, L. R., 17, Q. B. Div., 290; *Evans v. Lewis*, 30 Ohio St., 11.

An examination of the authorities discloses the fact that nearly all these cases have been either overruled or discredited by subsequent decisions in the respective States.

The case of *Hill v. Bowman*, 35 Mich., 191, is overruled by the case of *Schaible v. Ardner*, decided in 1893, 56 N. W. Rep., 1105. The latter case is instructive in this inquiry, because the statute of Michigan is apparently identical, with respect to the persons sought to be protected, with sec. 1120. The language used is, "creditors and other persons of their lawful suits, damages, forfeitures, debts, or demands." The court uses this language: "The construction of the word 'creditors' in *Hill v. Bowman* is a narrow one at best, and the language employed wholly overlooks the other terms employed in the statute, and necessarily excludes them. It is certainly difficult to comprehend why the language 'other persons' having lawful suits, damages, or demands, should be disregarded. Similar statutes have been construed in other States, and a consensus of the decisions is given in the text of 8 Amer. & Eng. Enc. Law, 750, where it is said: 'A creditor, in this connection, is not necessarily the holder of a debt merely, as that term is generally understood, for one having a legal right to damages capable of judicial enforcement is a creditor, within the meaning of the statutes and law upon the subject of fraudulent conveyances.'"

In Maine the rule is the same, the case of *Meserve v. Dyer*, supra, being no longer followed. In the case of *Toble and Clark Mfg. Co. v. Waldron*, 75 Maine, 472, the question was precisely the same as in the present case. The court held that under the Statute 13th Eliz. C., 5, a cause of action *ex delicto* has the same protection as a cause of action arising *ex contractu*. So, in Tennessee, the case of *Langford v. Fly*, 7 Humph., 585, supra, is overruled by the case of

*Farnsworth v. Bell*, 5 Sneed, 532, where it was held that a cause of action for slander brought a party within the protection of the statute, it being held that he was a "creditor." In New Jersey, the case of *Severs v. Dodson*, cited by counsel for the defendant, is distinctly disapproved in *Thorp v. Leibrecht*, 56 N. J. Eq., 499, where the court uses this language: "It seems a startling proposition to say that my neighbor, through actionable negligence, may set fire to and destroy my dwelling . . . and escape payment therefor by making a voluntary settlement on his wife of all his property before I can get judgment against him."

The case of *Ward v. Hollins*, 14 Md., 158, supra, does not touch the question involved here. But in the case of *Wilde v. Scotten*, 59 Md., 72, the rule is laid down that the Statute of Elizabeth is sufficiently comprehensive in its terms to embrace, and does embrace not only creditors technically so, but such as have causes of action for slander, trespass, and other torts.

The case of *Jones v. Jones*, 79 Miss., 261, supra, furnishes no support to defendant. There the plaintiff filed a bill in equity to recover damages for a tort and to have set aside certain conveyances which he charged to be fraudulent. The court quite naturally held that a chancery court had no jurisdiction to hear and determine a suit for unliquidated damages arising out of a tort. In the case of *McInnis v. Wicassett Mills*, 78 Miss., 52, however, the Supreme Court of that State did decide the precise question involved here, using the following language: "We reject as unsound the proposition advanced by the appellees that complainant, whose claim rested in tort, could not come within the protection of the Statute of Frauds. In determining who is a creditor, the statute must be liberally construed, and it protects, at least as against actual fraud, one who, at the time of the conveyance, is suing the grantor in an action of tort."

The case of *Evans v. Lewis*, 30 Ohio St., 11, does support defendant's contention, and, so far as I have been able to ascertain, has not been overruled. The case of *Green v. Adams*, 59 Vt., 602, quoted by counsel for defendant also supports his proposition; but it is not in accord with the case of *Corey v. Morrill*, 71 Vt., 51, in which the court held that a claim for damages for misrepresentations concerning the status of a corporation of which the fraudulent grantor was a director brought a plaintiff within the protection of the statute.

On the other hand, the overwhelming weight of authority, both in this country and in England, is against the contention of defendant and in favor of admitting to the protection of statutes against fraudulent conveyances those whose cause of action arises *ex delicto*. And this conclusion is generally reached in States where the statute is narrower than that of 13th Elizabeth. The text-writers uniformly draw this conclusion from the decisions. For example: *Bigelow on Fraud* (vol. 2, p. 148) declares the rule as follows: "Equally within the protection of the statutes against fraudulent conveyances are those who are entitled to recover damages or sums of money one knows not of what amount, whether large or small, until a jury or a judge has assessed them. Such are damages

for breach of contract of marriage, claims for alimony, claims of a wife for support . . . and a great variety of other claims both in contract and in tort. It matters not that it may be extremely doubtful, a priori; whether the claimant will be entitled to recover; an apparent right of action, or right to the aid of the court, is enough when it is necessary for the party to have relief before judgment." And he cites cases where the statute has been successfully invoked by those who have claims for damages for trespass, for assault and battery, seduction, liability in bastardy proceedings, conversion, and selling intoxicating liquors to the injury of the plaintiff.

The latest treatise on the subject of fraudulent conveyances is found in 20 Cyc., 323, and is by Frederick S. Wait, of the New York Bar, the author of a well-known work on the subject. He lays down the rule as follows: "The well-nigh universal rule is that claims for damages arising from torts are within the protection of the statute against fraudulent conveyances. Thus, persons having a cause of action for libel or slander, assault and battery, bastardy, seduction, breach of promise to marry, trespass, usury penalties, or deceit, are regarded as creditors and within the meaning of such statutes." And this statement is supported by decisions from twenty-three of the United States, and from England. Indeed, as I have said, Ohio seems to be the only State adhering to the contrary doctrine.

It is urged on behalf of defendant that many of the decisions which support plaintiff's bill construe the statute of 13 Elizabeth, c. 5, and that the phraseology of that statute is broader than the language of section 1120 of the Code. The language of the former statute, in this particular, is "creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, forfeitures, heriots, mortuaries, and reliefs." The language of the Code is: "Creditors or other persons having just claims or demands of their lawful suits, damages, or demands." As heretofore stated, the decisions sustaining the right of persons in the situation of plaintiff to take advantage of these statutes do not seem to differentiate the language of the several acts very minutely, but base their conclusions upon the general purpose of the legislation and give the acts a liberal interpretation. In fact, a majority of the latest cases hold the word "creditor" to be broad enough to include one having a cause of action ex delicto.

2d. It is next contended that in view of section 470 of the Code, plaintiff's remedy is by attachment. This contention can not be sustained in view of section 476, which specifically reserves to the creditor the right to file a judgment creditor's bill.

3d. The claim that Roger T. Mitchell to whom America conveyed for a normal consideration and who, on the same day, conveyed to America's wife for a similar consideration, should be made a party, is equally untenable. He was a mere conduit of the title and neither had nor has any title to or interest in the property.

4th. It is lastly contended that plaintiff has not complied with Equity Rule No. 9, requiring all exhibits referred to and prayed to be taken as part of the bill to be filed. The failure to comply

with this rule is not ground for demurrer. The rule itself provides that defendant shall not be required to file an answer, plea, or demurrer until the rule is complied with. If he chooses to demurr, he surely can not urge the failure to file exhibits as a ground of demurrer.

For these reasons the demurrer will be overruled with leave to answer in ten days.

BELLE T. BOND

v.

FREDERICK GRIMM.

WILLS; CONSTRUCTION OF PROVISION; TRUSTS.

1. Where a testator gave all his property to his wife "part in trust for my son," held that the will should be construed as if the word "moieties" had been used instead of "part," and the estate divided equally between the widow and son.
2. The fact that the son's part is devised in trust is immaterial, as being a naked trust the legal title vested immediately in the cestui que trust, either by operation of the Statute of Uses or Sec. 1617, Code D. C.

Equity No. 26,539. Decided November 2, 1906.

HEARING on bill in equity for the construction of a will. Decree construing will.

Messrs. Wilson and Barksdale for the complainant.

Mr. Harry S. Welch for the defendant.

Mr. Justice GOULD delivered the opinion of the Court:

The bill in this case is filed by the widow of Frederick Grimm, Sr., against his only heir at law, and the only offspring of their marriage, for a construction of her late husband's will. This document has been duly probated. It is as follows:

"In the name of the Ruler of the Universe: Be it known to all concerned that I, Frederick Grimm, residing at present in Brightwood Park, in the District of Columbia, U. S. A., being of sound mind and body, do hereby leave and bequeath all personal property, real estate and life insurance, that I may possess, or that may have accrued at the time of my death, to my wife, Belle T. Grimm, nee Harmon, part in trust for my son Frederick Grimm, Jr., without condition or restriction whatsoever, and name and appoint her hereby the sole executor of this my last will and testament expressly stating that she shall not be compelled to give bond."

The deceased left personal property, which has been consumed in the payment of his debts, and one piece of improved real estate, which was the home of himself, plaintiff and defendant, the title to which is involved in the construction of his will.

There are three obviously possible constructions:

1st. That the language whereby the respective parts of the estate are attempted to be designated is too vague and indefinite to admit of construction, thereby producing intestacy.

2nd. That the devise to the wife, plaintiff herein, creates a fee to the whole property in her, the limitation in trust to the son being void for uncertainty. And,

3rd. That the word "part" is to be taken as meaning a moiety, thus dividing the estate equally between widow and son.



"The cardinal rule is that the intention of the testator expressed in his will, or clearly deducible therefrom, must prevail if consistent with the rules of law." This is the language of the Chief Justice in *Young Women's Christian Home v. French*, 187 U. S., at p. 141; and that case is a notable example of the application of the rule, the court, having ascertained the intention of the testatrix, applying it to a condition which could not have been in her contemplation at the time the will was executed. Following that rule in the present case, it is necessary to reject the first construction, which would give the estate to the son subject to the widow's dower. The second interpretation is equally opposed to the testator's intention, as it would deprive the son of any interest in the property. It can not admit of question that the testator intended the estate to be divided between his widow and his son. It would seem, therefore, that the will should be construed as if the word "moiety" had been used instead of this word "part." Had he said in express terms "I devise my estate, one part to my wife and the other part to my son," there could be no question but that each would have taken a half. Had he said, "a part to my wife and a part to my son," the same result would follow. But the language used plainly indicates his intention that there shall be a division between the two, and it would seem in the absence of anything to indicate a contrary intention that this division should be in equal parts. Equality is equity, and where distribution is to be made between two, without anything to indicate the proportions in which they are to take, the presumption is that the shares are to be equal.

I am strengthened in this conclusion by the carefully considered case of *Lewis' Appeal*, 89 Pa. St., p. 509. There a testator devised "all the balance of my property to my sister for her lifetime, and at her death it is my desire that a part of it go to S. and his heirs." The court below held that the bequest of a part was void for uncertainty. But the Supreme Court reversed the case saying: "under the circumstances, it is manifest that not more than the two could participate, and hence the remainder was to be parted or divided between them; and in the absence of anything to indicate an unequal division, the presumption is that equality was intended; that the testator used the word *part* as synonymous with *moiety*, a sense in which it is sometimes popularly employed in speaking of a division between two."

It does not seem that the fact that the son's part is devised in trust is of consequence in this connection. Being a naked trust the legal title vests immediately in the cestui que trust, either by operation of the Statute of Uses or of section 1617 of the Code.

I will, therefore, sign a decree construing the will in accordance with this opinion.

**Attachment.**—An attachment is held, in *Beardslee v. Ingraham* (N. Y.), 3 L. R. A. (N. S.), 1073, to secure such possession of the real estate upon which it is levied that a receiver subsequently appointed by another court has no jurisdiction to interfere with it.

**Copyrights.**—Where the proprietors of certain private schools permitted the agent of a firm of photographers to take photographs of the schools entirely at the risk of the photographers, and the agent took photographs of the grounds and exteriors of the schools and the interior of schools and groups of the pupils, as the proprietor suggested or permitted, and some copies purchased by the proprietors, who sent copies of some of them to the publishers of an advertising medium, who reproduced them and inserted them in their publication, and the proprietors then registered the copyrights of the photographs in their own names as authors, it was held, in *Stackemann v. Paton* (1908), 1 Oh. 774, that permitting the photographer to enter the school and take the photographs on the chance of selling copies to the proprietors was a good consideration, and the photographs must be deemed to have been made for the proprietors for a good or valuable consideration within the meaning of the copyright act; and that the copyright therefore belonged to the proprietors of the schools, and not to the author of the photographs.

**Carriers.**—An unauthorized inspection of property shipped in sealed cars, permitted by a carrier, is held, in *Dudley v. Chicago, M. & St. P. R. Co.* (W. Va.), 3 L. R. A. (N. S.), 1135, not to amount to a wrongful delivery, so as to make the carrier liable for the value of the property as for a conversion thereof.

A shipper is held, in *Wabash R. Co. v. Campbell* (Ill.), 3 L. R. A. (N. S.), 1092, not bound, in order to minimize damages and relieve himself from the charge of contributory negligence, to remove from the car in which his cattle are placed a notice erroneously posted thereon by the carrier, indicating that the cattle are from an infected district; such notices being provided by government regulation, and interference with them being prohibited under penalty.

Notice to a carrier that failure to deliver promptly cattle food will result in injury to the cattle is held, in *Bourland v. Oboclaw, O. & G. R. Co.* (Tex.), 3 L. R. A. (N. S.), 1111, to be sufficient to entitle the shipper to recover damages for such injury, is given when the food has reached its destination; and the notice need not necessarily be given when the contract for transportation is made.

**Descent.**—The right of the court to ingraft an exception upon a plain provision of the statute of descent because the distributee has murdered his ancestor to secure possession of the property is denied in *McAlister v. Fair* (Kan.), 3 L. R. A. (N. S.), 726. Homicide as affecting devolution of property is the subject of a note to this case.

#### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

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## Legal Notices.

### FIRST INSERTION.

**Philip Walker, Solicitor**

In the Supreme Court of the District of Columbia.  
**Alfred H. Ritter v. Margaret M. Ritter and Samuel E. Love.** No. 28,684. Equity Dec. 58.

The object of this suit is to obtain an absolute divorce from the defendant, Margaret M. Ritter, because of her adultery with defendant, Samuel E. Love, and custody of infant child. On motion of the complainant, it is, this 16th day of November, 1906, ordered that the defendants, Margaret M. Ritter and Samuel E. Love, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post before said day. **ASHLEY M. GOULD, Justice.** True copy. Test: J. R. Young, Clerk, by R. P. Belew, Asst. Clerk. 46-8t

**Harold H. Simms, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Charles W. Kelly**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of November, 1906. **JULIA B. KELLY, Langdon, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 18,654. Administration. [Seal.] 46-3t

**Wm. A. McKenney, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Lewis J. Davis**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 15th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands, this 15th day of November, 1906. **PHILIP MAURO, 620 F St N. W.; AMERICAN SECURITY AND TRUST CO., by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 18,911. Administration. [Seal.] 46-8t

## Legal Notices.

**George E. Tralles, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Ellen Larguey**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Tuesday, the 4th day of December, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 15th day of November, 1906. **ELLEN KILROY, by George E. Tralles, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 18,810. Administration. [Seal.] 46-3t

**Wm. A. McKenney, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**Estate of John McAllister Schofield, Deceased.**

No. 18,948. Administration Docket —.  
Application having been made herein for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by **Georgia K. Schofield**, it is ordered, this 12th day of November, A. D. 1906, that **Laura Schofield, Richard McA. Schofield, Mary S. Andrews, and Georgina Schofield**, a minor, and all others concerned, appear in said court on Monday, the 17th day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **HARRY M. CLABAUGH, Chief Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 46-3t

[Filed November 15, 1906. J. R. Young, Clerk.]

**W. H. Linkins, Solicitor**  
In the Supreme Court of the District of Columbia,  
Holding an Equity Court.

**Benina M. Glover, Complainant, v. John J. Leroy et al., Defendants.** In Equity. No. 28,291.

The object of this suit is to declare the title of the complainant to part of original lot numbered eight (8), in square numbered eighty (80), in the city of Washington, District of Columbia, beginning for the same at the northwest corner of said lot and running thence south along the line of Twenty-second street, twenty-eight (28) feet; thence east sixty-two (62) feet two (2) inches, to the easterly line thereof; thence north twenty-eight (28) feet; and thence west sixty-two (62) feet two (2) inches, to the place of beginning, to be good of record in her in fee simple by reason of the adverse possession. On motion of the complainant, by her solicitor, **William H. Linkins**, it is, by the court, this 15th day of November, 1906, ordered that the defendants, **John J. Leroy, Jacob Moyer, Jacob Myer, Bernard Gilpin, Thomas J. Lowery, and Thomas Weatherall**, or **Thomas Weatherall, and John Harcroft**, executors, and **John Little, George W. Harkness**, trustees, **Forrester Young, Sarah McTiers, and Thomas Weaver**, and their or either of their unknown heirs, devisees, grantees, or allenees, either immediate or mediate, or the heirs of such person, or as claiming under, by or through either of said parties, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise will be proceeded with as in case of default. Provided this order shall be published once a week for four successive weeks in The Washington Law Reporter and The Evening Star, before said return day, two of which publications shall be the last two weeks in November, 1906, it appearing to the Court, upon good cause shown, based upon the affidavit filed herein, that further publication in this cause is unnecessary. **ASHLEY M. GOULD, Justice.** A true copy. Test: J. R. Young, Clerk, by F. L. Cunningham, Asst. Clerk. 46-4t

Justice blanks of every description for sale at this office.

**Legal Notices.****Malcolm Hufty, Solicitor**

**In the Supreme Court of the District of Columbia.**  
**Edith M. Johnson, Complainant, v. Albanus S. T. Johnson, Defendant. Equity, No. 24,454.**

The object of this suit is to obtain a divorce from the bonds of marriage on the ground of adultery. On motion of the complainant, by her solicitor, Malcolm Hufty, it is, this 12th day of November, 1906, ordered that the defendant, Albanus S. T. Johnson, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, otherwise the cause will be proceeded with as in case of default. Provided this order be published in The Washington Law Reporter and The Washington Times once a week for three successive weeks.

[Seal] HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, clerk, by Wms. F. Lemon, Asst. Clerk. 46-3t

**Walter A. Johnston, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Anna Robinson alias Anna Thornton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of November, 1906. BERTT H. BROCKWAY, 510 M st. N.W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,996. Admin. [Seal.] 46-3t

**Irving Williamson and James F. Bundy, Attorneys**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Rachel Denton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 14th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of November, 1906. ALBERT R. COLLINS, 490 E st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,765. Administration. [Seal.] 46-3t

**J. Edgar Smith, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Dexter A. Snow, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 13th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 13th day of November, 1906. CHESTER A. SNOW, 1812 Newton st.; BETTIE A. CRUSH, 712 8th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,001. Administration. [Seal.] 46-3t

**John J. Brosnan, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Thomas Coakley, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 13th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 13th day of November, 1906. MAURICE FITZGERALD, 512 4th st. S. W.; WILLIAM RYAN, 321 3d st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,816. Administration. [Seal.] 46-3t

**Legal Notices.**

**James A. Toomey and W. D. Sullivan, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the State of Maryland and the District of Columbia, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Owen Woods, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscribers, on or before the 13th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 13th day of November, 1906. FRANCIS X. MCKINNY, St. Charles College, Ellicott City, Md.; HENRY J. McDERMOTT, 2111 12th st. N. W., Wash., D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,702. Administration. [Seal.] 46-3t

**Tucker & Kenyon, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of May A. Brooke, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 13th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 13th day of November, 1906. JULIA McALLISTER, 940 K st. N. W.; ERNEST G. THOMPSON, 681 Penn. ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,917. Administration. [Seal.] 46-3t

**Carlisle & Johnson, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Elizabeth Flodstrom, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscriber, on or before the 14th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of November, 1906. CLARA A. VANS IVER, Brantwood, Md. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,011. Administration. [Seal.] 46-3t

**Charles J. Murphy, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Walter Scott Fowler, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscriber, on or before the 14th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of November, 1906. WILLIAM W. MORONEY, 166 N st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,013. Administration. [Seal.] 46-3t

**R. E. Mattingly, Solicitor**

**In the Supreme Court of the District of Columbia,**  
**Holding Equity Court.**  
**Mattie Server Meloney, Complainant, v. Clarence W. Meloney and Florence Chilcott, Defendants,**  
**Equity, No. 28,574.**

The object of this suit is to obtain a divorce from the bonds of marriage on the ground of adultery. On motion of the complainant, by her solicitor, Robert E. Mattingly, it is, this 12th day of November, A. D. 1906, ordered that the defendants, Clarence W. Meloney and Florence Chilcott, cause their appearances to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order. Provided this order be published in The Washington Law Reporter and in The Washington Times once a week for three successive weeks. By the Court: HARRY M. CLABAUGH, Chief Justice. A true copy.

[Seal] Test: J. R. Young, clerk, by Wms. F. Lemon, Asst. Clerk. 46-3t

**Legal Notices.****Birney & Woodward, Solicitors**

In the Supreme Court of the District of Columbia.  
The Trust Company of America, Complainant, v. Muriel Cridler et al., Defendants.  
No. 28,584. Equity.

The object of this suit is to procure the appointment of a trustee in the place of James K. Fitzgibbon (alleged lunatic), to carry out the trusts declared in a deed of trust made by the defendants, Muriel and Thomas W. Cridler, to said Fitzgibbon and one James Ross Curran. On motion of the complainant, it is, this 14th day of November, 1906, ordered that the defendants, Muriel Cridler and Thomas W. Cridler, cause there appearance to be entered herein on before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order is to be published in The Washington Post and The Washington Law Reporter once a week for

[Seal] three successive weeks. By the Court: HARRY M. CLABAUGH, Chief Justice. A true copy.

Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 46-3t

**Leckie & Fulton, Attorneys**

In the Supreme Court of the District of Columbia,  
Holding a Probate Court.

In re Estate of Margaret McHenry, Deceased.  
Probate, No. 18,648.

The executor and trustee, William A. Foy, in the above entitled cause, having reported an offer in writing to purchase for the sum of twenty-two hundred and fifty dollars (\$2,250) in cash, the following property, to wit: Part of lot 8 in Kelly and Thompson's subdivision of lots in square numbered 738, as per plat recorded in the office of the surveyor for the District of Columbia in Liber W. F. at folio 136, beginning at the southwest corner of said lot; thence north along First street 16 feet; thence east 100 feet; thence south 18 feet to "D" street; thence west along "D" street 100 feet to the beginning, it is, this 9th day of November, A. D. 1906, ordered that the said executor and trustee be, and he is hereby, authorized to accept said offer, and upon compliance with the terms of sale by the purchaser, the said sale shall stand ratified and confirmed, unless cause to the contrary be shown on or before the 10th day of December, A. D. 1906. Provided a copy of this order be published in The Washington Law Reporter once a week for three

[Seal] successive weeks before said last mentioned date. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 46-3t

**John B. Lerner, Attorney**

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Mary E. Lewis, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 3d day of December, 1906, at 10 o'clock A. M., as the time, and said court-room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 13th day of November, 1906. THE WASHINGTON LOAN AND TRUST COMPANY, by Frederick Eichelberger, by John B. Lerner, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,143. Administration. [Seal.] 46-3t

**Padget & Forrest, and John E. McNally, Solicitors**  
In the Supreme Court of the District of Columbia.

Mary Doran v. John Doran et al.  
Equity, No. 25,884.

John E. McNally and H. L. Rush, trustees herein named, having reported the sale of lot 151 in W. W. McCullough's subdivision of lots in square No. 235, to Jacob Diemer for the sum of \$5,000, it is, by the court, this 8th day of November, 1906, ordered that the said sale be finally ratified and confirmed, unless cause to the contrary be shown on or before the 10th day of December, 1906. Provided a copy of this order be published in The Washington Post and The Washington Law Reporter once a week for three successive weeks before said last named day. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 46-3t

**Legal Notices.**

**William C. Prentiss, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Kungunda Fedarwisch, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 3d day of December, 1906, at 10 o'clock A. M., as the time, and said court-room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 14th day of November, 1906. JOHN T. BRANSON, by William C. Prentiss, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,177. Adm. [Seal.] 46-3t

**Albert Sillers, Attorney**

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Mary McCullough, Deceased.

No. 12,916. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Robert E. McCullough, it is ordered, this 5th day of November, A. D. 1906, that George C. McCullough and Mary McCullough and all others concerned appear in said court on Monday, the 10th day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] HARRY M. CLABAUGH, Chief Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 46-3t

**Berry & Minor, Attorneys**

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Augusta E. Thurlow, Deceased.

No. 18,956. Administration Docket 35.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Elizabeth J. Scott, it is ordered this 12th day of November, A. D. 1906, that Francis M. Thurlow, Stephen Henry Thurlow, Robert Thurlow, Frank Thurlow (a minor), Albert Thurlow (a minor), and all others concerned, appear in court on Monday, the 17th day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] day. HARRY M. CLABAUGH, Chief Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 46-3t

**SECOND INSERTION.****W. H. Marlow, Solicitor**

In the Supreme Court of the District of Columbia.  
Clara Herold, Complainant, v. Oscar W. Gardner et al., Defendants. Equity, No. 28,177.

Walter H. Marlow, Jr., the trustee herein, having reported sale at public auction of that part of lot ten, square eight hundred and forty-six, in the city of Washington, District of Columbia, beginning for the same at a point ninety feet south of the northwest corner of said square and running thence south thirty feet; thence east ninety-two feet and one inch; thence north thirty feet, and thence west ninety-two feet and one inch to place of beginning, to Clara Herold for twenty-nine hundred and fifty dollars, it is, this 2d day of November, A. D. 1906, ordered and decreed that the said sale be, and it is hereby, finally ratified and confirmed, unless cause to the contrary be shown on or before December 3d, 1906. Provided a copy of this order be published once a week for three successive weeks before said last-mentioned day in The Washington Law Reporter. ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by R. P. Belew, Asst. Clerk. 45-3t

**Legal Notices.**

**W. H. Sholes and Reginald S. Huidekoper, Solicitors**  
In the Supreme Court of the District of Columbia,  
Holding an Equity Court.

**Charles M. Woolf et al., Complainants, v. The Unknown Heirs, Devisees, and Alienees of John Ray and Sarah Ray, Deceased, et al., Defendants.**  
In Equity, No. 26,555.

The object of this suit is to declare title by adverse possession in the trustees herein of certain land and premises, situate in the county of Washington, in the District of Columbia, and known and distinguished as all that portion of certain tracts of land situate in said District of Columbia and known as "John and Mary's" and "Trouble Ended," and otherwise known as "Tucker's Farm," and described as follows: "Beginning at a bound stone on the north side of the road from Bladensburg at the end of the division line, between Enoch Tucker's land and that of N. Queen's heirs, and running with said division line north twenty and one-half (20½) degrees, west one hundred and thirteen (113) perches to the bound stone on the south side of the road from Rock Creek Church; thence east six and sixty-one one-hundredths (6 61/100) perches with said road; thence north seventy and one-half degrees (70½), east fourteen and eight one-hundredths (14 8/100) perches; thence north eighty-five and three-fourth (85¾) degrees, east nine and fifth-two one-hundredths (9 52/100) perches; thence south eighty-two and one-half (82½) degrees, east seventy-four and four one-hundredths (74 4/100) perches with the said road to the Sargent Road; thence with Sargent Road south seven and one-half (7½) degrees, east thirty-seven and seventy-six one-hundredths (37 76/100) perches to a stone on the north side of the first mentioned road, and thence with said road south forty-six (46) and one-half (½) degrees, west ninety-three and sixty-four one-hundredths (93 64/100) perches to the beginning, containing about forty-four (44) acres, two (2) roods and ten (10) perches, and being the same land conveyed by deed from James G. Payne, trustee, to Louis D. Means and recorded among the land records of the District of Columbia in liber 159, at folio 167 et seq., except nine thousand three hundred and forty-seven and fifty-one one-hundredths (9,347.51) square feet more or less of said land heretofore conveyed by the said Louis D. Means to William Nelson by deed duly recorded among the land records of the said District of Columbia in liber 1882, at folio 417 et seq., and described by metes and bounds as follows: Beginning at the intersection of the Sargent and Bunker Hill Roads; thence with Bunker Hill Road south forty-seven (47) degrees, west fifty (50) feet; thence north forty-three (43) degrees, west one hundred and fourteen (114) feet and nine (9) inches to a ditch; thence with said ditch north fifty-five (55) degrees, east one hundred and twenty-three (123) feet and seventy-nine one-hundredths (79/100) of a foot to the Sargent Road; thence with said road south six and one-half (6½) degrees, east one hundred and twenty-three (123) feet to the place of beginning." On motion of the complainants, it is, this 7th day of November, A. D. 1906, ordered that the defendants, the unknown heirs, devisees, and alienees of John Ray and Sarah Ray, his wife, deceased; Annie E. Babcock, Campbell Elias Babcock, Orville E. Babcock, Adolph Borie Babcock, or their unknown heirs, devisees, and alienees, cause their appearance to be entered herein on or before the fortieth (40th) day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order, good cause having been shown to the satisfaction of the court; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald. By the Court: **ASHLEY M. GOULD, Justice.** True copy. Test: J. R. Young, Clerk, by R. P. Belew, Ass't. Clerk. 45-3t

**Clarence R. Wilson, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Hannah R. Ashton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 5th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 5th day of November, 1906. **J. HUBLEY ASHTON, 622 F st. N. W.; ELIZABETH ASHTON WILSON, 1640 21st st. N. W.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 14,002. Administration. [Seal.] 45-3t

**Legal Notices.**

**Thomas Walker, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**Estate of Seolina Thurston, Deceased.**  
No. 13,949. Administration Docket 35.

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a., on said estate, by Mary E. McIntosh, it is ordered, this 5th day of November, A. D. 1906, that George M. Thurston and Frank L. Thurston, and all others concerned, appear in said court on Tuesday, the 11th day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **HARRY M. CLABAUGH, Chief Justice.** Attest: James

[Seal] **Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court.** 45-3t

**Cole & Donaldson, Solicitors**  
In the Supreme Court of the District of Columbia.  
**Oscar Teschner, Plaintiff, v. New England Tonopah Mining Company, Defendant.**  
At Law, No. 48,727.

The object of this suit is to recover from the defendant the sum of \$387.50 compensation as an employee of the defendant and disbursements made for defendant by plaintiff, more particularly set out in the declaration in this case, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 5th day of November, 1906, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter and

[Seal] **The Washington Herald before said day.** By the court: **WRIGHT, Justice.** A true copy. Test: J. R. Young, Clerk, by Alf. G. Buhrman, Asst. Clerk. 45-3t

**Milhan & Smith, Solicitors**  
In the Supreme Court of the District of Columbia,  
**John D. W. Moore v. Elizabeth Reid et al.**  
Equity No. 26,511. Docket 59.

The object of this suit is partition by sale of parts of lots five (5) and six (6) in square eleven hundred and ninety-three (1193) in the city of Washington, District of Columbia, and three small islands in the Potomac River in said District, known as the Three Sisters, more fully described in the bill herein, and a statement and settlement of the account of complainant against the estate of John Moore, deceased. On motion of complainant it is, this 3d day of November, A. D. 1906, ordered that the defendants, Mary B. Moore, Kate D. Moore, Nannie B. Moore, Max Hoblitzell, Glen M. Bailie, George M. Moore, Lewis B. Moore, Robert S. Moore, and Loula Willard, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Evening Star and The Washington Law Reporter before said day. **HARRY M. CLABAUGH, Chief Justice.** A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 45-3t

**John L. Cassin and P. H. Marshall, Attorneys**  
In the Supreme Court of the District of Columbia,  
Holding an Equity Court.

**Henry G. Bergling et al v. Eleanora Nolte et al.**  
Equity No. 23,507.

John L. Cassin and Percival H. Marshall, trustees, having reported to the court the sale of the northern part of lot numbered twenty-six (26) in Naylor and Rothwell's recorded subdivision of square numbered four hundred and twenty-five (425), for nine thousand five hundred and fifty (\$9,550) dollars; it is by the court this 8th day of November, 1906, adjudged, ordered and decreed that said sale be confirmed unless cause to the contrary be shown on or before December 10th, 1906. Provided a copy of this order be published once a week for three weeks in The Washington Law Reporter and

The Evening Star before the last-mentioned day. **HARRY M. CLABAUGH, Chief Justice.** A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 45-3t

**Legal Notices.****Cole & Donaldson, Attorneys**

In the Supreme Court of the District of Columbia.  
Samuel J. Harman et al., Plaintiffs, v. New England  
Tonopah Mining Company, Defendant.  
At Law, No. 48,738.

The object of this suit is to recover the sum of \$2,806.28, counsel fees and disbursements claimed of the defendant by the plaintiffs, more particularly set out in the declaration filed in this case, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 5th day of November, 1906, ordered that the defendant appear in this court on or before the fortieth day exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter and The Washington Herald.

[Seal] before said day. By the Court: WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by Alf. G. Buhrman, Asst. Clerk. 45-St

**Geo. R. Linkins, Attorney**

In the Supreme Court of the District of Columbia,  
Holding a Probate Court.  
In re Will of Katherine Frawley, Deceased.  
Administration, No. 13,638.

**ORDER OF PUBLICATION.**

Michael J. Frawley having made application to the Supreme Court of the District of Columbia, holding a Probate Court, for probate and record of the last will and testament of said Katherine Frawley, deceased, and for letters of administration de bonis non cum testamento annexo to George R. Linkins, it is, this 7th day of November, A. D. 1906, ordered that Anastasia Kelley, Patrick Frawley, James Frawley, Kate McMahon, Patrick S. Frawley, Mary McMahon, Ann O'Loughlin, John O'Loughlin, Patrick O'Loughlin, and the unknown heirs at law and next of kin of said Katherine Frawley, deceased, and all others concerned, appear in said court on Monday, the 10th day of December, A. D. 1906, at 10 o'clock A. M., and show cause, if any they have, why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star, once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 45-St

**Jas. Gillin and H. T. Winfield, Attorneys**

In the Supreme Court of the District of Columbia.  
Frank Fritsch, Plaintiff, v. Elizabeth C. Prall, Defendant.

At Law, No. 48,703. Docket 53.

The object of this suit is to recover the sum of two thousand one hundred fifty-five and eighty-nine one-hundredths (\$2,155.89) dollars, the same being the amount of a judgment rendered against the said Elizabeth C. Prall in favor of the said Frank Fritsch, together with costs and disbursements in relation thereto in the Supreme Court of the State of New York in and for the county of Kings, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 2d day of November, 1906, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day. By the Court: JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by Alf. G. Buhrman, Asst. Clerk. 45-St

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**Legal Notices.****Maurice J. Pierce, Attorney**

Notice is hereby given of the filing of a petition in the Supreme Court of the District of Columbia, on the 1st day of November, 1906, by William Marion Smith, praying a decree changing his name to William Marion Irby-Smith, for reasons set forth in said petition. WILLIAM MARION SMITH, 722 Munsey Building, Washington, D. C. 45-St

**J. A. Maedel, Attorney**

Supreme Court of the District of Columbia.  
Holding Probate Court.

Estate of Henry Hinke, Deceased.

No. 13,975. Administration Docket—.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Camilla Hinke, it is ordered, this 2d day of November, A. D. 1906, that the unknown heirs at law of the said Henry Hinke, and all others concerned, appear in said court on Monday, the 10th day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice.

[Seal] Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 45-St

**THIRD INSERTION.****Barnard & Johnson, Solicitors**

In the Supreme Court of the District of Columbia.  
Jennie R. Willoughby, Complainant, v. Edgewood  
Syndicate et al., Defendants.

No. 24,848, in Equity. Docket 54.

Guy H. Johnson and R. Preston Shealey, trustees, having reported to the court the sale to William M. Mooney of lots numbered one (1) to twenty-five (25), both inclusive, being all of square numbered two (2) in the subdivision known as "Edgewood," in the District of Columbia, as per plat in liber co No. 7, at folios 98 and 99, of the surveyor's office for said District, containing about 100,000 square feet of ground, more or less, for the price of nine (9) cents per square foot, payable all cash, or subject to a deed of trust for four thousand dollars (\$4,000) and the balance cash. It is, this first day of November, A. D. 1906, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 3d day of December. Provided a copy of this order be published once a week for three (3) successive weeks before said last-mentioned day in The Washington Law Reporter and Evening Star.

[Seal] HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. 44-St

**S. Herbert Giesy, Solicitor**

In the Supreme Court of the District of Columbia.  
Bertha C. Wilcox, Plaintiff, vs. Samuel D. Cruttenden,  
Henry E. Stone, Nellie Field, et vir; Edward E.  
Field, Sarah Hull, Edward A. Chittenden, Jean-  
nette Crittenden, Benjamin Rossiter, John Ross-  
iter, Adeline Rossiter, Frances Rossiter, Anna  
Rossiter, Lois R. Foote, Mary E. Newton, et vir;  
Arthur S. Newton, Duane J. Kelsey, Ida B. Bill-  
man, et vir; Ira Billman, Gertrude E. Stevens, et  
vir; A. B. Stevens, Martha L. Coward, Curtiss Wil-  
cox, Kate Wilson, Curtiss A. Hall, Defendants.  
In Equity, No. 26,506. Doc. 59.

The object of this suit is to sell lot eight (8), in square four hundred and three (403), improved by houses 806 and 808 K street N. W., Washington, D. C., and from the proceeds to pay the creditors of August C. Wilcox, deceased, their claims and his widow an allowance in lieu of dower, and the tenants in common of the heirs of said Wilcox their respective proportions of such proceeds. On motion of the complainant, it is, this 29th day of October, A. D. 1906, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order in The Washington Post and The Law Reporter; otherwise the cause will be proceeded with as in case of default. By the Court: ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by R. P. Belew, Asst. Clerk. 44-St



**Legal Notices.**

[Filed November 1, 1906.]

**A. Leftwich Sinclair, Attorney**

In the Supreme Court of the District of Columbia, Holding a Special Term as a District Court of the United States for the District of Columbia.

In the Matter of the Payment of Damages Resulting to Adjacent Property From Changes in the Grades of Streets, Avenues, and Alleys Authorized by the Act of Congress Approved February 28, 1903, Relating to the Construction of a Union Railroad Station in the District of Columbia.

District Court No. 671.

Notice is hereby given that we, the undersigned, having been designated and appointed by the Supreme Court of the District of Columbia, holding a special term as a United States District Court for the District of Columbia, as a commission to appraise the damages resulting to adjacent property from changes in the grades of streets, avenues, and alleys authorized by the act of Congress approved February 28, 1903, relating to the construction of a union railroad station in the District of Columbia, will meet at 10 30 o'clock A. M., on Wednesday, the 12th day of December, A. D. 1906, at the United States Court House (City Hall), in the District of Columbia, in a room to be assigned us by the United States Marshal for said District, for the purpose of viewing the property affected by the changes of the grades of the following-named streets, avenues, and alleys, and hearing testimony touching the damages resulting to real property from said changes of grade, in accordance with the terms and provisions of the act of Congress approved April 22, 1904, entitled "An act to provide for payment of damages on account of changes due to construction of the Union Station, District of Columbia," to wit: Second street northeast, Third street northeast, and K street northeast, around square numbered seven hundred and fifty (750), and the alleys and minor street (Parker street) in said square; Delaware avenue and Second street northeast, around square numbered seven hundred and forty-eight (748); and Third street northeast, between L and M streets. All owners of real property damaged by the changes in the grades of said streets, avenues, or alleys will file a petition with us, in this cause, signed and sworn to, for an allowance of damages within sixty (60) days after the said 12th day of December, A. D. 1906. The aforesaid act of Congress approved April 22, 1904, provides that upon the failure of any such owner to thus present his claim, within said period, his right to do so shall cease and determine. CHARLES A.

BAKER, GEORGE W. MOSS, GEORGE [Seal] SPHANSY, Commission to Appraise Damages. A true copy. Test. J. R. YOUNG, Clerk, by T. E. Cunningham, Asst. Clerk.

nov. 2, 9, 16, 23, 30; dec. 7.

**Wm. A. McKenney, Attorney**

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Willie Jane Bestor, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 29th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 31st day of October, 1906. AMERICAN SECURITY AND TRUST CO., by James F. Hood, Secretary; NORMAN BESTOR, The Woodley, Wash., D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,888. Administration. [Seal.] 44-31

**Howard Boyd, Attorney**

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Katherine Kirby, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of November, 1906. MARY F. HEIDE, 512 7th st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,878. Administration. [Seal.] 44-31

**Legal Notices.****J. B. Horgan, Attorney**

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Thomas Yates, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 29th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of October, 1906. JAMES B. HORGAN, 452 D st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,902. Administration. [Seal.] 44-31

**Conrad H. Syme, Attorney**

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Joseph Henry Krull, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of October, 1906. HONORA KRULL, 1245 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,974. Administration. [Seal.] 44-31

**W. H. Sholes, Attorney**

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Lewis E. Duvall, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of October, 1906. ELLEN C. DUVAL, 474 E st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,989. Administration. [Seal.] 44-31

**Arthur Peter, Attorney**

In the Supreme Court of the District of Columbia, Katherine W. Guy vs. Dan Dorsey Guy and Ann Allen, alias Nan Allen.

No. 26,538. Equity Dec. —.

The object of this suit is to obtain an absolute divorce upon the ground of adultery. On motion of the complainant, it is, this 24th day of October, 1906, ordered that the defendant, Ann Allen, alias Nan Allen, cause his appearance to be entered herein on or before the forth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post before said day. HARRY M. CLA-BAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 44-31

**Wm. A. McKenney, Attorney**

Supreme Court of the District of Columbia, Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Eleanor A. H. Magruder, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscriber, on or before the 25th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of October, 1906. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,936. Administration. [Seal.] 44-31



**Legal Notices.****Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscribers, who were by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Robert E. Sullivan, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 26th day of November, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 30th day of October, 1906. DENNIS J. O'LEARY, JOHN D. COUGHLAN. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,187. Administration. [Seal.] 44-8t

John B. Larnier, Attorney

**Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Adolphe Berger, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 19th day of November, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 30th day of October, 1906. THE WASHINGTON LOAN AND TRUST COMPANY, by Frederick Elchelberger, Trust Officer, by John B. Larnier, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,228. Administration. [Seal.] 44-8t

Wm. A. McKenney, Attorney

**Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John H. Elliott, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of October, 1906. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,488. Administration. [Seal.] 44-8t

**FOURTH INSERTION.**

[Filed October 23, 1906.]

A. Leftwich Sinclair, Attorney

In the Supreme Court of the District of Columbia, Holding a Special Term as a District Court of the United States for the District of Columbia.

In the Matter of the Payment of Damages Resulting to Adjacent Property from Changes in the Grade of Streets, Avenues, and Alleys Authorized by the Act of Congress Approved February 12, 1901, Relative to the Elimination of Grade Crossings on the Line of the Baltimore and Potomac Railroad Company, in the District of Columbia. District Court. No. 671.

Notice is hereby given that we, the undersigned, having been designated and appointed by the Supreme Court of the District of Columbia, holding a special term as a United States District Court for the District of Columbia, as a commission to appraise the damages resulting to adjacent property from changes of the grades of streets, avenues, and alleys authorized by the act of Congress approved February 12, 1901, relative to the elimination of grade crossings on the line of the Baltimore and Potomac Railroad Company in the District of Columbia, will meet at 10.30 o'clock A. M., on Friday, the 30th day of November, A. D. 1906, at the United States Court House (City Hall), in said District, in a room to be assigned us by the United States Marshal for said District, for the purpose of viewing the property affected by the changes in the grades of the following-

**Legal Notices.**

named streets, and hearing testimony touching the damages resulting to real property from said changes of grades, pursuant to the terms and provisions of an act of Congress approved June 23, 1906, entitled "An act to provide for payment of damages on account of changes of grade due to the elimination of grade crossings on the line of the Philadelphia, Baltimore and Washington Railroad Company," to wit: I street S. E., between 5th street and Virginia avenue; I street S. E., between 6th and 7th streets; K street S. E., between 6th and 7th streets; K street S. E., between 7th street and Virginia avenue; 6th street S. E., between G and I streets; 6th street S. E., between Virginia avenue and K street; Virginia avenue S. E., between 6th and 6th streets; Virginia avenue S. E., between 6th and 7th streets; Virginia avenue S. E., between 7th and 8th streets; Virginia avenue S. E., between 2d and 3d streets; H street S. E., between 1st and 2d streets. All owners of real property damaged by the changes in the grades of said streets will file a petition with us, in this cause, signed and sworn to, for an allowance of damages, within twelve months after the said 30th day of November, A. D. 1906. The aforesaid act of Congress approved June 23, 1906, provides that upon the failure of any such owner to thus present his claim within said period, his right to do so shall cease and determine. CHARLES A. BAKER, GEORGE W. MOSS, GEORGE SPANSEY, Commission to Appraise Damages. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. oct. 26, nov. 2, 9, 16, 23

**FIFTH INSERTION.**

[Filed July 20, 1906. J. R. Young, Clerk.]

W. E. Poulton, Jr., Solicitor

In the Supreme Court of the District of Columbia. Cotter T. Bride v. The Unknown Heirs, Devisees, and Allenees of James Neale, "of Bennet," Deceased. Equity No. 28,148. Doc. No. 58.

On motion of complainant, it is, this 20th day of July, A. D. 1906, ordered that the defendants, the unknown heirs, devisees, and allenees of James Neale, "of Bennet," deceased, cause their appearance to be entered herein, on or before the first rule day, occurring three (3) months after the day of the first publication of this order; otherwise this cause will be proceeded with as in case of default. The object of this suit is to declare the title of complainant to lot numbered two (2) in square numbered five hundred and ninety-nine (599), in the city of Washington, in the District of Columbia, to be good in fee simple by adverse possession.

[Seal] By the court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. sept 21, 28; oct 19, 26; nov 16, 23

**SIXTH INSERTION.**

E. A. Newman, Solicitor

In the Supreme Court of the District of Columbia. Claudia M. Moran and Another v. The Unknown Heirs or Devisees of John B. Bernaben, Deceased. No. 28,501. Equity Doc. 59.

The object of this suit is to obtain a decree of the court vesting title by adverse possession in the complainants according to their respective rights in and to all that certain piece or parcel of ground and premises situate in the city of Washington and District of Columbia, and known and distinguished as and being part of original lot 6 in square 428. Beginning for said part at the northwest corner of said lot and running thence east 78.67 feet to the line of the property conveyed to Young by deed recorded in liber No. 1721, folio 459, one of the land records of the District of Columbia; thence south with the west line of said property 23.58 feet; thence west 22.47 feet to the line of the property conveyed to the heirs of Martha J. Greer by deed recorded in liber No. 1751, folio 184, of the said land records; thence north 0.85 of a foot, and thence southwesterly 56.20 feet, more or less, to the line of 8th street west, and thence north along the line of said 8th street 23.58 feet to the said place of beginning. On motion of the complainants, it is, this 7th day of September, 1906, ordered that the defendants, the unknown heirs or devisees of John B. Bernaben, deceased, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three months in The Washington Law Reporter and The Washington Post and The Evening Star before said day. ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by J. W. Latimer Asst. Clerk. sept. 14, 21; oct. 12, 19; nov. 9, 16

# The Washington Law Reporter

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## DECISIONS BY THE COURT OF APPEALS THIS WEEK.

### Fire Insurance; Construction of Contract of Reinsurance.

In *Allemannia Fire Insurance Company v. Fireman's Insurance Company*, the action was brought by the appellee upon a contract of reinsurance made by the appellant with respect to property insured by the appellee, and which was destroyed by the great Baltimore fire in February, 1904. The appellee company was rendered insolvent as the result of the fire, and the present action was by its receiver. It was contended by the appellant that under its contract of reinsurance it was liable only for its pro rata share of the amount actually paid by the appellee to the persons insured—in other words, that actual payment by the appellee of its losses in whole or in part was a condition precedent to its right of recovery from the appellant—and no payment having been made by it by reason of its insolvency, no recovery could be had from the appellant. This contention was denied by the trial court, and its ruling is affirmed by the Court of Appeals, in an opinion by Mr. Justice McComas.

### Wills; Illiterate Persons; Presumptions; Evidence.

In *Lipphard v. Pumphrey*, the appeal was from a judgment of the Probate Court, admitting a will to probate after contest. It appeared

that testatrix, who was an illiterate person and unable to read or write, had signed the instrument by her mark; and it was contended by the caveators that, it not being shown that the will was read over to her, or that she knew or had made known to her its contents, the verdict must be in their favor on the issues as to execution, notwithstanding the testatrix, in the presence of the attesting witnesses, had declared it to be her last will and testament, and asked them to attest it. This contention was denied by the trial court, and the issues submitted to the jury, which sustained the will. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, affirms the judgment of the court below, holding that illiterate persons are entitled to the benefit of the presumption that a testator knew the contents of the instrument the execution of which he called witnesses to attest, and that it expressed his will, which presumption stands unless there are attending circumstances leading to a different conclusion, and no such circumstances appearing in this case. The exclusion by the trial court of declarations by the testatrix as to the contents of her will is also held to have been proper.

### Pleading; Issue of Fact Joined on Plea in Abatement; Leave to Plead to Merits; General Objection.

In *Brown, executor, v. Savings Bank of the Grand Fountain, etc.*, it appeared that an issue of fact was joined on a plea in abatement and a jury being waived was adjudged in favor of the plaintiff. The court below, however, granted the defendant leave to plead to the merits within twenty-four hours, upon payment of all costs to date, and plaintiff noted a general exception to this ruling. The defendant filed its pleas to the merits within the time limited, issue was joined thereon, and the trial resulted in a verdict and judgment for the defendant. In the Court of Appeals it was urged that the trial court erred in not entering judgment for the plaintiff on determining in his favor the issue joined on the plea in abatement; but the court, in an opinion by Mr. Justice Robb, holds that the objection made by the plaintiff to this ruling was too general to admit of the question being raised in the appellate court, and therefore affirms the judgment in favor of the defendant.

### Public Lands; Mandamus.

In *United States, ex rel. Roche v. Hitchcock*, the appeal was from an order dismissing a petition for a writ of mandamus to compel the delivery by the Secretary of the Interior of certain land certificates originally issued to one Philemon Chance. The case involved the considera-

tion of several acts of Congress; and the Court of Appeals, in an opinion by Mr. Chief Justice Shepard, holds that the matter being one with respect to which the Secretary was vested with the exercise of judgment and discretion, mandamus will not lie to control that exercise, and affirms the order dismissing the petition.

**Habeas Corpus; Extradition; Evidence.**

In *De Poilly v. Palmer* the appeal was from an order dismissing a petition for a writ of habeas corpus filed by a party arrested upon a warrant issued by the Chief Justice of the Supreme Court of this District in response to a requisition from the Governor of New York charging him with a crime committed in that State. After his arrest the chief justice, after inquiry, determined that he was a fugitive from justice, and directed that he be turned over to the agent of the State of New York. At the hearing upon his petition for the writ of habeas corpus, the court refused to admit evidence offered by him to the effect that he had remained in New York more than three years after the date on which it was alleged the offense was committed, and that the charge against him was "trumped up" to aid a divorce proceeding instituted by his wife. The Court of Appeals, in an opinion by Mr. Justice McComas, affirms the order dismissing the petition.

**Master and Servant—Incompetency of Servant.**—Incompetency of a servant held to mean want of ability suitable to the work either as regards natural qualities or experience, or deficiency of disposition to use one's ability and experience properly. *Hamann v. Milwaukee Bridge Co.*, Wis., 106 N. W. Rep., 1081.

**Life Insurance—Presumption of Death From Absence.**—Where, in an action on a life policy, the question was whether the assured, who had not been heard from for over seven years, was dead, it was not error to exclude mortality tables. *Heagany v. National Union (Mich.)*, 106 N. W. Rep., 700.

**Contracts—Conditions Precedent.**—Where A contracts with B to pay certain notes made by B, maturing at different dates, the contract is severable, and in an action by B on default of A he would be limited to the amount of the notes matured and unpaid. *Thomas v. Richards (Ga.)*, 53 S. E. Rep., 400.

**Contracts—enforcement.**—Where a contract to paint and paper a building had been partly performed when the building was burned held that the contractors were entitled to recover for the value of their labor and materials. *Ganong & Chenoweth v. Brown*, (Miss.), 40 So Rep., 556.

**Court of Appeals of the District of Columbia.**

**STILSON HUTCHINS ET AL., APPELLANTS,**

**v.**

**CARRIE L. MUNN.**

**INJUNCTION; SERVICE OF PROCESS; NOTICE; WAIVER; AUDITOR'S FINDINGS.**

1. Want or insufficiency of service of process in a suit for an injunction is cured by the appearance and answer of the defendant.
2. Where, in a suit for an injunction, no service of process was actually made upon certain of the defendants, but attorneys appeared and filed a motion in their behalf to dissolve the temporary injunction and thereafter filed an answer for said defendants, such appearance was a waiver of actual service; and the defendants, on the injunction being dissolved, are entitled to recover any damages sustained by its having been wrongfully and inequitably sued out.
3. A person having actual notice of the fact that an injunction has been issued is bound thereby, although not actually served with process.
4. The findings of an auditor, concurred in by the court below, are to be taken as presumptively correct, and will be allowed to stand unless clearly shown to have been predicated upon an erroneous view of the law or not sustained by the evidence.
5. While appellee was engaged in making extensive improvements to her dwelling-house, and when the work had progressed to an extent that rendered the house uninhabitable, the work was stopped by an injunction issued at the suit of appellant, and which injunction was dissolved at the hearing. The auditor, to whom the matter was referred to assess the damages, found the appellee had been deprived of the use of her residence for three-fourths of the regular Washington season, and assessed her damages at \$6,000. Held, upon a review of the case, that the auditor's findings are justified by the evidence, and a decree confirming such findings affirmed.

No. 1680. Decided November 7, 1906.

**APPEAL** from a decree of the Supreme Court of the District of Columbia, in Equity, No. 23,468, confirming an auditor's report on the question of damages sustained by appellee by reason of the injunction wrongfully and inequitably obtained by appellant. Affirmed.

*Mr. C. A. Brandenburg, Mr. E. C. Brandenburg, and Mr. F. W. Brandenburg* for the appellants.

*Mr. Samuel Maddox and Mr. H. Prescott Gatlley* for the appellee.

Mr. Justice ROBB delivered the opinion of the Court:

The appellee, Carrie L. Munn, in 1888 purchased the house and premises known as No. 1601 Massachusetts avenue, N. W., the consideration being \$70,000. This house is located at the corner of Sixteenth street, N. W., and fronts on the avenue. As originally constructed its west wall extended to within 12½ feet of the west line of the lot. Adjoining the Munn premises on the west was the house of appellant, Stilson Hutchins. The east wall of the Hutchins house, for a distance of 28 feet from the northwest corner of the Munn lot, covered the dividing line between the two lots, and under the building regulations of the District was a party wall for that distance. After purchasing her house Mrs. Munn built two one-story additions to the house, consisting of a billiard room and conservatory. These additions were on the northwest corner of the lot, and in their construction she used and paid for so much of said party wall as was needed. The construction of these additions still left a vacant space fronting Massachusetts avenue 12½

feet wide and 34 feet deep. Sometime in the spring of 1902 Mrs. Munn decided to enlarge her house, so that it would practically cover this vacant space, and in furtherance of this project engaged the services of a skilful architect and a competent builder, and entrusted the undertaking to them. She then went to Europe accompanied by her husband and family. The addition to her house was to be of brick to correspond with the house itself, and to be three stories high. For a ground plan of this addition, see *Hutchins v. Munn*, 22 App. D. C., 92: 31 Wash. Law Rep., 344. The work was commenced about July 1, 1902, and was to be entirely completed within four months from that time, which would have enabled the Munn family to return and occupy the house during the winter season as they had planned to do. The work was progressing satisfactorily when on August 14, 1902, appellant filed his petition in the Supreme Court of the District of Columbia against the Munns and James G. Hill, the architect, and William P. Lipscomb, the builder, and on the same day a temporary order was issued that "the defendants, and each of them, be restrained and enjoined from continuing the erection of the addition" above described. The defendants Hill and Lipscomb were served with process, and work was, of course, immediately discontinued. In conformity with the rules of court, an undertaking was filed conditioned "to make good all damages suffered or sustained by reason of wrongfully and inequitably suing out the injunction." The plan for the addition contemplated the removal of a considerable portion of the wall of the main building adjacent thereto, and, *when the restraining order was issued, this portion of the wall had been removed*, and the foundation walls of the addition were even with the surface of the ground. On August 17, 1902, notice was given Brandenburg & Brandenburg, solicitors for petitioner, that on August 21st, or as soon thereafter as counsel could be heard, a motion was to be made to discharge the rule to show cause and to dissolve the temporary injunction. This notice was signed by Samuel Maddox and H. Prescott Gatley "as attorneys for defendants," and service of same was acknowledged August 17, 1902, by Brandenburg & Brandenburg and W. D. Waugh, solicitors for petitioner. The above motion to discharge the rule, etc., was filed by Mr. Maddox and Mr. Gatley "as attorneys for defendants." Mrs. Munn, who was then in Europe, received actual notice of the injunction from her attorney, Mr. Maddox, shortly after it was issued. She made arrangements with her husband that he should return to the United States for the purpose of filing an answer to the bill, and for the purpose of representing her generally in the matter. On October 30, 1902, a joint and several answer was filed by the Munns to every material allegation in the bill, and on November 25, 1902, after hearing, the Supreme Court of the District of Columbia dissolved the temporary injunction, discharged the rule to show cause, and dismissed the bill. An appeal was prosecuted to this court by Mr. Hutchins, and on May 6, 1905, the decree of the court below was confirmed (*Hutchins v. Munn*, supra). On May 28, 1903, the Supreme Court of the District referred the matter to the auditor of that court

to ascertain and report the damages, if any, suffered by reason of the wrongful suing out of said injunction. The auditor on February 18, 1905, made a report, and on December 15, 1905, a second or supplemental report. These reports were ratified and approved by the court below, and a decree entered that Mr. Hutchins and his sureties pay Mrs. Munn \$6,000 damages together with costs.

From that decree this appeal was taken.

1. It is urged that the court below erred: "in finding and holding the defendant, Mrs. Munn, was enjoined, and, therefore, entitled to any damages whatever on the injunction undertaking."

So far as the record discloses, this is the first time since the inception of this litigation in August, 1902, that it has been contended that Mrs. Munn was not properly before the court and subject to the restraining order so long as that order was in force. Within three days after the order was issued notice was given the solicitors for the complainant by Mr. Maddox and Mr. Gatley, as attorneys for defendants, that they would shortly move to dissolve the injunction. Mrs. Munn testified that she was notified of the restraining order by Mr. Maddox in August, 1902, which must have been within two weeks from the time it was issued. Mr. Munn soon thereafter returned to the United States, and Mr. Maddox filed a joint and several answer for Mr. and Mrs. Munn to which no objection was made. That appellant's solicitors then understood and believed that Mr. Maddox was fully authorized to enter an appearance in behalf of all the defendants, is apparent from the fact that no effort appears to have been made to serve Mr. Munn with process while he was in the United States. We think the appearance of Mr. Maddox and Mr. Gatley for the Munns was a waiver of actual service, especially as all doubt was removed as to their authority to enter such an appearance by the filing of the above answer on October 30, which must be held to be a ratification of the authority previously exercised, and to relate back to the original appearance.

Want or insufficiency of service of process in an action for injunction is cured by appearance and plea of defendant. *Underwood v. Wood*, 93 Ky., 177; *Cooley v. Lawrence*, 5 Duer, 605; *Parker v. Williams*, 4 Paige, 439; *Seebor v. Hess*, 5 Paige, 85.

Although notice of an application for injunction is required by statute, it is waived by a voluntary appearance. *Enc. P. & P.*, Vol. 10, 999.

Moreover, we can not assent to the proposition that a defendant may have actual knowledge of the issuance of an injunction and disobey it with impunity. We think the authorities are to the contrary. In the case *In re Lennon*, 166 U. S., 554, the court, through Mr. Justice Brown, said: "The facts that petitioner was not a party to such suit, nor served with process of subpoena, nor had notice of the application made by complainant for the mandatory injunction, nor was served by the officers of the court with such injunction, are immaterial, so long as it was made to appear that he had notice of the issuing of an injunction by the court. To render a person amenable to an injunction it is neither

necessary that he should have been a party to the suit in which the injunction was issued, nor to have been actually served with a copy of it, so long as he appears to have had actual notice. *High on Injunctions*, 1444; *Mead v. Norris*, 21 *Wisconsin*, 310; *Wellesley v. Mornington*, 11 *Beav.*, 181."

In *Ulman v. Ritter*, 72 *Fed.*, 1000, this question was discussed, and the court said: "The counsel for defendant seek to relieve him from the responsibility of his conduct in this respect, contending that knowledge thus acquired, of the existence of the injunction, had no legal and binding effect upon him. I can not agree with them in their position, and I am unable to find, either in the text-books or adjudicated cases, any authority to sustain such a position. If such a position could be maintained, it would destroy to a great extent the effect of the restraining powers of courts of equity, and their usefulness would be greatly impaired. I hold the unquestioned law to be that an injunction becomes operative from the time the order was made, and effective upon the party from the time he has notice of its existence. It is a matter of no moment how the defendant acquired the information of its existence. When once he has been apprised of the fact, he is legally bound to desist from doing what he is restrained and inhibited from doing. If this were not the rule, often great injury could be inflicted, in numberless cases, though the mandate of the court was in existence." See, also, *Ex parte Richards et al.*, 117 *Fed.*, 688; *State v. Knight*, 3 *S. D.*, 509; *Winslow v. Nayson*, 113 *Mass.*, 419; *Golden Gate Hy. Co. v. Superior Ct.*, 65 *Cal.*, 187; *Burr v. Kimbark*, 29 *Fed.*, 428; *Edwards v. Edwards*, 31 *Ill.*, 474.

Holding, as we do, that Mrs. Munn was properly before the court and subject to the restraining order, it necessarily follows that she was entitled to recover any damages "suffered or sustained by reason of wrongfully and inequitably suing out the injunction."

2. The other assignments of error may be considered together as they all relate to the finding of the auditor that the measure of damages was the value of the use of the property during the season of deprivation; that is, from about November 1st to March 1st, notwithstanding that the injunction was dissolved in November.

In approaching this question we must have in mind the functions of an auditor and the weight and consideration to be given his findings. As was said by this court in *Richardson v. Van Auken*, 5 *App. D. C.*, 209: 23 *Wash. Law Rep.*, 102: "The findings of a master or an auditor, concurred in by the court below, are to be taken as presumptively correct, and will be permitted to stand unless some obvious error has intervened in the application of the law or the principles of the decree under which he acts, or some important mistake has been made in the evidence, and which has been clearly pointed out and made manifest. This rule has been repeatedly affirmed by the Supreme Court of the United States, and is one of general application in the equity practice, both in the Federal and State courts of the country. *Tilghman v. Proctor*, 125 *U. S.*, 136; *Evans v. State Bank*, 141 *U. S.*, 107; *Crawford v. Neal*,

144 *U. S.*, 585; *Furrer v. Ferris*, 145 *U. S.*, 132."

The question was also discussed in *Smith v. Trust Co.*, 12 *App. D. C.*, 192: 26 *Wash. Law Rep.*, 199, the court saying: "The auditor is not a mere examiner in chancery, to take testimony for the convenience of the court and to return it to the court for its consideration. The auditor is a judicial officer, charged with judicial functions, as has been repeatedly decided; and his findings of facts are analogous to the verdict of a jury in a suit at common law. Such findings of fact are conclusive unless their correctness is impugned under proper proceedings for the purpose.

"In the order of reference there was no requirement that the testimony, which the auditor was directed to take, in order to enable him to reach a determination, should be returned to the court, or made a part of his report; and it may be questioned whether the fact that he returned the testimony with his report justifies its being considered as part of his report.

"It is well settled that, in reference to findings of fact by an auditor or master in chancery, his conclusions 'depending upon the weighing of conflicting testimony, have every reasonable presumption in their favor, and are not to be set aside or modified, unless there clearly appears to have been error or mistake on his part' (*Tilghman v. Proctor*, 125 *U. S.*, 136, 149), which rule as repeated in the case of *Callaghan v. Myers*, 128 *U. S.*, 617. In the case of *Richardson v. Van Auken*, 5 *App. D. C.*, 209, 213, and again in the case of *Grafton v. Paine*, 7 *App. D. C.*, 255, as well as in some subsequent cases, we have had occasion to enforce this same rule."

See, also: *Grafton v. Paine*, 7 *App. D. C.*, 255: 23 *Wash. Law Rep.*, 806; *Haller v. Clark*, 21 *D. C.*, 128: 20 *Wash. Law Rep.*, 726; *York v. Tyler*, 21 *D. C.*, 285: 21 *Wash. Law Rep.*, 33; *Ry. Co. v. Gordon*, 151 *U. S.*, 285.

In his first report the auditor found: "That this property was purchased by Mrs. Munn some years ago at a cost of seventy thousand dollars and that since that time sundry improvements or additions have been constructed at a substantial cost. The house was purchased and maintained for the occupation of Mrs. Munn and her family and was furnished in a style corresponding to its character and size. It was the practice of the family to occupy the house from the fall until the late spring and for the remainder of the year they spent the time at other localities in this country or abroad. *The progress of the work on this addition at the date of the restraining order was such as to render the house for dwelling purposes particularly uninhabitable.*

"Taking up the claim for the loss of the use of the property resulting from the restraining order it appears in proof that the work on the addition to the main house was commenced the first week in July and was intended to be completed in four months, which would have brought the completion to the early part of November, in time for the

*family to resume their occupation.* At the date of the restraining order approximately a month and a half of the estimated time had elapsed and a proportionate part of the work done. The work was then suspended until the decree of this court on the 25th of November dissolving the restraining order, so that three months and ten days of useful time of this character of work had been wasted. The building of the addition was not completed and the house ready for suitable occupancy until late in April or very early in May of 1903, near the time at which it was the custom of the family to leave Washington for their summering. They were, therefore, deprived of the use of the property for the entire season of customary occupation.

That there is a Washington season which affects the rental term and occupancy of a certain class of property is a fact so generally known as to come nearly, if not quite, within the scope of judicial notice. The property in question is of that class. This so-called season was the customary period of occupation by Mrs. Munn and her family. The claimant, Mrs. Munn, is entitled to the value of the use of the property during the season of deprivation and the evidence is to be applied to that period, not solely for the purpose of showing what she lost as rent or income, but to determine what it would have cost her to procure the use of other property approaching her own in location, condition, and equipment during such time. Taking the estimate of the several witnesses touching the rental value of Mrs. Munn's property, I find a fair mean to be the sum of eight thousand dollars per annum, of which I find three-fourths, being six thousand dollars, to be the reasonable value of the use of the property for the period during which she was deprived of its use by reason of the injunction."

Because the auditor found in this report that Mrs. Munn was not responsible for delay in the progress of the work after the dissolution of the restraining order, she having employed a competent architect and a competent builder to superintend the work, the case was again submitted to him to find "whether there was any lack of reasonable diligence, and, if so, what damages she (Mrs. Munn) has sustained upon that basis." In this second report the auditor, after a consideration of the testimony, said:

"If it be assumed, as I find, that no unreasonable delay occurred prior to the 1st of January, another month's work would have brought it to the 1st of March, and would have completed the builder's estimate of two and a half months. Even if the work had been completed at that time, it is very evident that the property could not have been rented, and the entire rental season would have been lost. If Mrs. Munn had waited until that time to occupy the residence, she would have been without her home during all the period from November to March by the fault of the complainant Hutchins. If, in the month of November when the work was resumed, she had found and leased other property substantially the same in character, equipment, and location, and desired to occupy it till her own residence should be finished, she would have been compelled to pay the full season's or year's rental. So that in either event

the injury suffered by her in being deprived of the use of her residence was practically consummated before the 1st of November."

The auditor, therefore, adhered to his original finding as to the damages sustained by Mrs. Munn. The record shows that he carefully considered and gave due weight to all the evidence submitted to him, and, in a case like this where his report has been ratified and confirmed by the court below, we are not disposed to disturb the findings therein unless fully convinced such findings are not sustained by the evidence, or that they are predicated upon an erroneous view of the law. Doubts as to the findings of an auditor certainly should not be resolved against the injured party and in favor of the party causing such injury. We have carefully examined the whole record, and have reached the conclusion that the auditor's findings are justified by the evidence. Mrs. Munn testified, and her testimony was not disproved, that her plans, by reason of the delay caused by the restraining order, "were decidedly changed . . . as this restraining order was not dissolved until the 21st of November, the building then had to go on and it prevented us from occupying our house until late in the spring." On cross-examination she was asked:

"Q. Now, Mrs. Munn, in the fall of 1902 was it not your intention to remain in Europe that fall? A. That was not our intention so far as I know anything about it. We had our cabins engaged to return to Washington and had to give them up, perhaps at a sacrifice.

"Q. You know that of your personal knowledge? A. Yes."

It seems to us, therefore, that the auditor from this and other testimony was justified in finding that the Munn family intended to return to Washington and occupy their home during the winter of 1902-3. We think the finding of the auditor that there was a delay "roughly estimated at about thirty days" in the progress of the work after the injunction was dissolved, was a very liberal finding in favor of the appellant, in the view of the fact that it would have taken two months and a-half to complete the work during the period when the work could have been been advantageously prosecuted; that is, from the middle of August, when the work was stopped by the injunction, until the 1st of November. Considering all the testimony and having in mind the character and quality of the work, and that it had to be prosecuted during the winter months, we are unable to say that there was any unnecessary delay. The addition Mrs. Munn planned was to be perfect in execution and in keeping with the house itself. She engaged skillful and competent men to prosecute the work, and instructed them to procure the best materials obtainable. She had a right to expect and to receive a satisfactory and adequate return for her money, and Mr. Hutchins ought not to be heard to complain because the work after the dissolution of the restraining order was not prosecuted with as much haste as it could and, no doubt, would have been prosecuted during the months of September and October. The auditor found, however, that, even though the house had been completed early in March, the damages suffered by Mrs. Munn would have

been the same, because it would have cost her as much to rent a similar house from November to that time as for the season.

While the amount awarded seems large, we are unable to find from the evidence that it is excessive. The property, aside from the furnishings of the house, represented an investment of more than \$100,000, and the finding was based upon the testimony of witnesses familiar with the rental value of similar houses in the locality of the Munn house.

The point is made that in no event could Mrs. Munn recover damages for the loss of the use of the whole house because she was restrained from building the addition only. We think this contention untenable. Mr. Hutchins delayed action a month and a half and did not arrest the progress of the work until the main house, as the auditor found, had been rendered "practically uninhabitable" by the removal of a considerable portion of the outside wall adjacent to the addition, and because of and in connection with the construction of the addition. The house continued to be uninhabitable; that is, unsuitable for the purposes of a family dwelling until the addition was completed, and, inasmuch as the completion of the addition was stayed through the procurement of the restraining order, we think Mr. Hutchins must make good the damages directly resulting therefrom.

Objection is made that Mrs. Munn is not entitled to damages because she did not in fact return to Washington and in fact rent a similar house for the season. It appearing that Mrs. Munn but for this injunction would have returned to occupy her house during the season, we think she is entitled to damages for being kept out of it, notwithstanding she did not elect to live in some other similar house in Washington during that period. It was for her to determine whether she would occupy some other house in Washington, or whether, being kept out of her own house by the wrongful act of the appellant, she would live elsewhere during the winter of 1902-03; and the appellant is not in a position to complain because she chose the latter course. "Where a party is restrained by an injunction, wrongfully sued out, from exercising acts of ownership over land, he will be entitled to such damages as are the necessary and proximate result of that deprivation. In determining their extent the court proceeds upon equitable principles, and is not governed by arbitrary or technical rules." 16 A. & E. Enc. of L. (2d ed.), 466.

The case of *Edwards v. Edwards*, 31 Ill., 474, was an action of debt upon an injunction bond. The plaintiff, by reason of the injunction, had been deprived of the use and enjoyment of certain property from March to September following, and in the opinion in that case the court observed: "The principal question, however, on the assessment of damages, is as to the use of the land. The injunction was issued early in the spring, and was dissolved early in September and during that time restrained the party from taking possession of a certain farm. The defendants insisted that the measure of damages was the value of the use of the land up to the time when the injunction was dissolved. We think the court properly allowed the evidence to take a wider range, and show that be-

ing kept out of the land, till the first day of September, occasioned the loss of the crops for the season. The question is not, what was the land worth to the complainant in the injunction suit, but, what was the damage to the defendant for being kept out of possession during that period."

In *Smith et al. v. Wells*, 46 Miss., 64, which was a suit on an injunction bond, the court said: "The loss of the use and rental of the premises for a year was the result of suing out the writ; or, at all events, the jury have certified that damages to the extent of one year's rent has ensued. But for the interference of the complainant, Mrs. Wells or her tenants would have occupied the premises, or she would have recovered possession, perhaps, in time to have made them available."

"The party injured by the injunction is entitled to compensation for all loss and injury, actually and fairly referable to the wrongful act of the obligor". See, also, *Lange v. Wagner*, 52 Md., 310; *Banks v. State use Ranstead*, 62 Md., 88; *Hicks v. Hekring*, 17 Cal., 566; *Roberts v. White*, 73 N. Y., 375; *Alexander v. Colcord*, 85 Ill., 323; *Jones v. Allen*, 85 Fed., 523.

Appellant in his brief refers to the admiralty case of *The Conqueror*, 166 U. S., 110, as being in point on this question of the assessment of damages. That case was a libel to recover possession of the steam-yacht *Conqueror*, which had been illegally detained by the Collector of Customs for the District of New York, and for damages for the illegal detention. It appears that the vessel was designed for pleasure only, and had never been put to any other use. The court said: "The main question in this case turns upon the proper measure of damages. In the amount of \$21,742.24, awarded by the final decree of the District court, was included the sum of \$15,000, 'for loss of use of boat while detained by the respondent, from August 27, 1891, to February 3, 1892, at \$100 per day'. This is the principal item of damages to which objection is made in this court."

After directing attention to the fact that damages caused by an illegal seizure of a ship are in the nature of demurrage, and that, therefore, there must be actual loss in order to warrant a recovery, the court further said: "The difficulty is in determining when the vessel has lost profits and the amount thereof. The best evidence of damages suffered by detention is the sum for which vessels of the same size and class can be chartered in the market. Obviously, however, this criterion can not be often applied, as it is only in the larger ports that there can be said to be a market price for the use of vessels, particularly if there be any peculiarity in their construction which limits their employment to a single purpose. In the absence of such market value, the value of her use to her owner in the business in which she was engaged at the time of the collision is a proper basis for estimating damages for detention, and the books of the owner showing her earnings about the time of her collision are competent evidence of her probable earnings during the time of her detention."

"Again, the court may properly take judicial



notice of the fact that the yachting season in our northern waters practically comes to an end before the first of November, and, as The Conqueror was seized on August 27, during more than one-half the time for which demurrage was allowed she probably would have been laid up at her wharf. It is true there was a possibility that her owner might have desired her for use in a winter's cruise to tropical waters; but there was not the slightest evidence of that, and the contingency of her being so used was too remote to justify an allowance upon that basis."

We think there is a clear distinction between the case of The Conqueror and the case at bar. The Conqueror was a pleasure yacht only, and there was no evidence that her owner intended to use her during the period she was held by the collector. Moreover, she had been seized by an officer of the United States in the line of his duty, and although it subsequently transpired that he had acted under a misapprehension of the law, the circumstances of the case demanded that clear, positive, and certain proof of actual loss be adduced to entitle her owner to recover damages for her detention.

In the present case we are dealing with a dwelling-house and the home of the injured party. The testimony not only shows the value of the use of similar homes, but it shows that Mrs. Munn would have occupied and received benefit from her home, but for the injunction wrongfully procured by appellant.

The damages awarded her were, we think, the direct result of the injunction, and comprehended within the terms of the undertaking entered into by appellant and his sureties "to make good all damages suffered or sustained by reason of wrongfully and inequitably suing out the injunction."

The decree appealed from, in our opinion, should be affirmed, with costs, and it is so ordered.

**Affirmed.**

#### THE UNITED STATES OF AMERICA, APPELLANT,

v.

CHARLES R. EVANS AND HARRY J. O'DONNELL.

#### CRIMINAL LAW; INDICTMENT FOR MURDER WHILE PERPETRATING ANOTHER OFFENSE; ROBBERY.

1. Robbery is an offense "punishable by imprisonment in the penitentiary," within the meaning of section 798 of the Code, providing that "whoever, . . . in perpetrating or attempting to perpetrate any offense punishable by imprisonment in the penitentiary, kills another," shall be guilty of murder in the first degree, notwithstanding the offense of robbery may be punished, within the discretion of the court, by imprisonment in the jail.
2. The words "punishable by imprisonment in the penitentiary" include not merely offenses that can only be punished by such imprisonment, but such as may be so punished.

No. 1708. Decided November 7, 1906.

**APPEAL** by United States from an order of the Supreme Court of the District of Columbia, holding a criminal court, sustaining a demurrer to an indictment for murder. Reversed.

*Mr. D. W. Baker* for the United States.

*Mr. Thos. C. Taylor* for the appellees.

*Mr. Chief Justice SHEPARD* delivered the opinion of the Court:

By way of inducement to the presentment the indictment charged the defendants with robbing one Morris J. Halloran of certain articles of property, and attempting to rob him of others, on February 1, 1901; and then proceeded to charge that on said date, in perpetrating and attempting to perpetrate the said offense of robbery, the defendants "feloniously, wilfully, purposely, and of their malice aforethought" did make an assault upon the said Halloran; and with a certain piece of wood held in the hands of said Charles R. Evans, "feloniously, wilfully, and of their malice aforethought," did strike and wound the said Halloran upon the head, inflicting a mortal wound from the effects of which he died on February 14, 1906. The final presentment was that the defendants, "him, the said Maurice J. Halloran, in the manner and form aforesaid, feloniously, wilfully, purposely, and of their malice aforethought, did kill and murder; against the form of the statute in such case made and provided," etc.

The indictment is founded on section 798 of the Code which defines murder in the first degree as follows: "Whoever, being of sound memory and discretion, purposely, and either of deliberate and premeditated malice or by means of poison, or in perpetrating or in attempting to perpetrate any offense punishable by imprisonment in the penitentiary, kills another, is guilty of murder in the first degree."

Section 810 of the Code provides that one convicted of the offense of robbery "shall suffer imprisonment for not less than six months nor more than fifteen years." It will be observed that the place of imprisonment is not designated. Section 934, however, provides that where one is sentenced to imprisonment for a term not exceeding six months the imprisonment shall be in either the workhouse or the jail; if the time be longer than six months and not longer than one year it shall be in the jail; but if longer than one year the imprisonment shall be in the penitentiary.

The ground upon which the demurrer was sustained is, that robbery is not an "offense punishable by imprisonment in the penitentiary," within the meaning of Section 798 above quoted.

We are of the opinion that this construction is erroneous.

The words "punishable by imprisonment in the penitentiary" do not mean an offense that can only be punished by such imprisonment, but include such as may be so punished.

Robbery remains an infamous crime at common law, notwithstanding it may be punished, within the discretion of the trial court, by imprisonment in the jail as in the case of a simple misdemeanor. Hence prosecutions for robbery must be by indictment in all cases; for in determining whether a crime be infamous within the meaning of the Constitution, "the question is, whether it is one for which the statutes authorize the court to award an infamous punishment, not whether the punishment ultimately awarded is an infamous one." *Ex parte Wilson*, 114 U. S., 417, 426; *Mackin v. U. S.*, 117 U. S., 248, 252.

The principle governing the above cases has been applied by the same court in later cases which, in our opinion, settle the question now

under consideration. In re Mills, 135 U. S., 263, 266; In re Mayfield, 141 U. S., 107, 114; U. S. v. Pridgeon, 153 U. S., 48, 61.

In the case of In re Mills, the applicant for the writ of *habeas corpus* had been convicted and sentenced by the District Court of the Western District of Arkansas, which had been invested with jurisdiction over all offenses committed in the Indian Territory. On May 1, 1889, an act of Congress established a United States Court in and for that Territory, conferring upon it exclusive jurisdiction "over all offenses against the laws of the United States committed within the Indian Territory as in this act defined, not punishable by death or by imprisonment at hard labor." The offense of which Mills had been convicted was that retailing liquor in the Indian Territory for which he could be punished, under the statute creating the offense, by "fine of not less \$1,000 nor more than \$5,000," and be imprisoned not less than six months nor more than two years." The contention that the jurisdiction of this offense had been taken away from the Arkansas District Court and conferred upon the court in the Indian Territory, was expressly denied. Mr. Justice Harlan, who delivered the opinion of the court, said: "An offense which the statute imperatively requires to be punished by imprisonment 'at hard labor,' and one that must be punished by 'imprisonment,' but the sentence to which imprisonment the court may, in certain cases, in its discretion, required to be executed in a penitentiary where hard labor is prescribed for convicts, are each 'punishable' by imprisonment at hard labor. The former offense certainly must be thus punished; and as the latter may, in the discretion of the court, be so punished, it may, also, and not unreasonably, be held to be 'punishable' by imprisonment at hard labor." After discussing the cases of Wilson and Mackin (*supra*), and others, it was finally said: "These considerations justify us in holding, as we do, that the words 'punishable . . . by imprisonment at hard labor,' in the act of March 1, 1889, embrace offenses which, although not imperatively required by statute to be so punished, may, in the discretion of the court, be punished by imprisonment in the penitentiary."

It may be added, also, that the very question presented here has been determined in the same way by the Supreme Judicial Court of Massachusetts (Com. v. Pemberton, 118 Mass., 36, 42), as will appear from the following extract from the opinion therein delivered: "By our law, murder 'committed in the commission of, or attempt to commit, any crime punishable with death or imprisonment for life, is murder in the first degree.' The crime defined in section 24 of the same chapter, and of which the evidence tended to show that the defendant was guilty at the time of the homicide, is punishable with imprisonment for life, or any term of years. The expression 'punishable with imprisonment for life' is broad enough to include any crime for which, on conviction, the guilty party is liable to such imprisonment. It can not receive a narrower construction without doing violence to its terms. 'Punishable' means liable to punishment." See, also, Com. v. Chance, 174 Mass., 245, 253; State v. Smith, 32 Me., 369, 372;

State v. Neuner, 49 Conn., 232, 233; Dull v. People, 4 Denio, 91, 92; People v. Murphy, 185 I., 623, 626.

There is nothing reasonable in the appellee's contention that the foregoing decisions are not in point because section 810 of the Code does not expressly provide that the imprisonment for fifteen years, which the court may, in its discretion, impose upon conviction of the offense of robbery, shall be in the penitentiary. Section 934 provides generally that where the sentence on any conviction is for a term exceeding one year the imprisonment shall be in the penitentiary, and applies to section 810 as directly as if it had been incorporated therein. In re Mills, 135 U. S., 263, 269; In re Mayfield, 141 U. S., 107, 114; Fields v. U. S., 27 App. D. C., 433, 450.

For the reasons given, the judgment will be reversed, and the case remanded for further proceedings in conformity with this opinion. Reversed.

#### RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

#### Legal Notices.

##### FIRST INSERTION.

Geo. F. Collins, Solicitor

In the Supreme Court of the District of Columbia.  
In Re Lawson Council, No. 297, Independent Order of St. Luke, a Corporation. Equity, No. 26,700.

Upon consideration of the petition of Lawson Council, No. 297, Independent Order of St. Luke, a corporation, asking for a dissolution of its corporate existence, it is this 20th day of November, A. D. 1905, ordered and adjudged that all persons interested in said corporation appear and show cause on or before the 24th day of November, A. D. 1906, if any they have, why said corporation should not be dissolved as prayed. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star before said day.

[Seal] By the Court: ASHLEY M. GOULD, Chief Justice. True copy. Test: J. R. Young, Clerk, by R. P. Belew. 47-St

Children & Fenning, Attorneys

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Michael Murphy, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of November, 1906. FREDERICK A. FENNING, Century Bldg. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,040. Administration. [Seal.] 47-St

R. Preston Shealey, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Hannah H. Hendrickson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of November, 1906. RICHARD HENDRICKSON, 921 1/2 La. ave. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,089. Admn. [Seal.] 47-St

**Legal Notices**

**In the Supreme Court of the District of Columbia,  
Holding a District Court.**

**In Re the Opening of an Alley in Square 870, in the  
District of Columbia. District Court, No. 702.**

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of section 1808 et seq. of the Code of Laws for the District of Columbia, and "An Act making appropriations to provide for the expenses of the District of Columbia for the fiscal year ending June 30th, 1907, and for other purposes; approved June 27th, 1906," have filed a petition in this court praying the condemnation of the land necessary for the opening of an alley in square 870, in the District of Columbia, as shown on a map or plat filed with said petition, as part thereof, and praying also, that a jury of five judicious, disinterested men, not related to any person interested in these proceedings, and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States marshal for the District of Columbia, to assess the damages each owner of land to be taken may sustain by reason of the opening of the aforesaid alley and the condemnation of the land necessary for the purposes thereof, and to assess the benefits resulting therefrom, including the expenses of these proceedings, as provided in and by the Code and act of Congress heretofore referred to. It is, by the court, this 22d day of November, A. D. 1906, ordered that all persons having any interest in these proceedings be, and they are hereby, warned and commanded to appear in this court on or before the 18th day of December, A. D. 1906, at 10 o'clock A. M., and to continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessments of benefits of the jury to be empaneled and sworn herein; and it is further ordered that a copy of this notice and order be published once in *The Washington Law Reporter* and once in *The Evening Star*, *Washington Herald*, and *Washington Times*, newspapers published in said District, before the said 18th day of December, A. D. 1906. It is further ordered that a copy of this notice and order be served by the United States marshal for the said District, or his deputies, upon the owner of the fee of the land to be condemned herein, if he may be found by said marshal or his deputies within the District of Columbia, before the 18th day of December, A. D. 1906. By the Court: JOB BARNARD, Justice.

[Seal] 1906. By the Court: JOB BARNARD, Justice.  
A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 47-17

**W. Gwynn Gardiner, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.**

**Estate of Jane E. Klickham, Deceased.  
No. 13,840. Administration Docket.—**

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by W. Gwynn Gardiner, it is ordered this 20th day of November, A. D. 1906, that Edward F. Cashell, and all others concerned, appear in said court on Monday, the 24th day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in *The Washington Law Reporter* and *Washington Times* once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than

[Seal] thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 47-37

**Sidney T. Thomas, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Selma B. Sharretts, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of November, 1906. SIDNEY T. THOMAS, 452 D st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,924. Administration. [Seal.] 47-37

Justice blanks of every description for sale at this office.

**Legal Notices.**

**In the Supreme Court of the District of Columbia,  
Holding a District Court.**

**In Re the Opening of a Minor Street in Square 1020,  
in the District of Columbia. District Court No. 701.**

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of section 1808 et seq. of the Code of Laws for the District of Columbia, and "An Act making appropriations to provide for the expenses of the District of Columbia for the fiscal year ending June 30th, 1907, and for other purposes; approved June 27th, 1906," have filed a petition in this court praying the condemnation of the land necessary for the opening of a minor street from G to I street in square 1020, in the District of Columbia, as shown on a map or plat filed with said petition, as part thereof, and praying also, that a jury of five judicious, disinterested men, not related to any person interested in these proceedings and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States marshal for the District of Columbia to assess the damages each owner of land to be taken may sustain by reason of the opening of the aforesaid minor street and the condemnation of the land necessary for the purposes thereof, and to assess the benefits resulting therefrom, including the expenses of these proceedings as provided in and by the Code and act of Congress heretofore referred to. It is, by the court, this 22d day of November, A. D. 1906, ordered that all persons having any interest in these proceedings be, and they are hereby, warned and commanded to appear in this court on or before the 18th day of December, A. D. 1906, at 10 o'clock A. M., and to continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessments of benefits of the jury to be empaneled and sworn herein; and it is further ordered that a copy of this notice and order be published once in *The Washington Law Reporter* and once in *The Evening Star*, *Washington Herald*, and *Washington Times*, newspapers published in said District before the said 18th day of December, A. D. 1906. It is further ordered that a copy of this notice and order be served by the United States marshal for the said District, or his deputies, upon such of the owners of the fee of the land to be condemned herein as may be found by said marshal, or his deputies, within the District of Columbia, before the 18th day of December, A. D. 1906. By the Court: JOB BARNARD, Justice.

[Seal] 1906. By the Court: JOB BARNARD, Justice.  
A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 47-17

**John E. Laskey and Ralph Given, Attorneys  
In the Supreme Court of the District of Columbia,  
Holding Probate Court.**

**In re Estate of George Hickenlooper, Deceased.  
No. 13,899.**

It appearing to the court that the citation issued herein to Lillie M. Davidson and Annie L. Hefner upon the petition of Frank A. Sebring and Harry L. Rust for the admission to probate of the last will and testament of said George Hickenlooper, deceased, has been returned "not to be found," the said Lillie M. Davidson and Annie L. Hefner are hereby notified of the said application for such probate, and it is this 20th day of November, A. D. 1906, ordered that the said Lillie M. Davidson and Annie L. Hefner cause their appearance to be entered herein on or before the thirtieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the matter will be proceeded with as in case of default. Provided a copy of this notice be published once in each of three successive weeks in *The Washington Law Reporter* and *The Washington Herald*. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 47-37

**T. B. Warrick, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Ida Johnson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3rd day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of November, 1906. THOS. B. WARRICK, 411 6th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,943. Administration. [Seal.] 47-37

**Legal Notices.**

**Barnard & Johnson Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Abigail Vance Sprague, Deceased.**  
 No. 14,014. Administration Docket—

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Robert W. Taylor and J. Alexander Vance, it is ordered, this 22d day of November, A. D. 1906, that Frank W. Vance, and all others concerned, appear in said court on Monday, the 24th day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said

[Seal] return day. **ASHLEY M. GOULD, Justice.**  
 Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 47-3t

**E. H. Thomas and James Francis Smith, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding a District Court.**

**In Re The Extension of Euclid Street, in Meridian Hill, in the District of Columbia.** District Court No. 688.

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of an act of Congress approved June 11, 1906, entitled "An act for the extension of Euclid street, in Meridian Hill, in the District of Columbia," have filed a petition in this court praying the condemnation of the land necessary for the extension of Euclid street, in Meridian Hill, in the District of Columbia, as shown on a plat or map prepared by the said Commissioners and annexed to their said petition and marked "Exhibit D. C. No. 1," and praying, also, that a jury of seven judicious, disinterested men, not related to any person interested in these proceedings, and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States Marshal for the District of Columbia to assess the damages each owner of land taken may sustain by reason of the extension of said street and the condemnation of the land necessary for the purposes of such extension and to assess the benefits resulting therefrom, as provided in the aforesaid act of Congress. It is, by the court, this 16th day of November, A. D. 1906, ordered that all persons having any interest in these proceedings be, and they are hereby, warned and required to appear in this court on or before the 6th day of December, A. D. 1906, at 10 o'clock A. M., and to continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be summoned herein; and it is further ordered that a copy of this notice and order be published once in The Washington Law Reporter, and on six secular days in The Washington Star and The Washington Herald, newspapers published in said District, before the said 6th day of December, A. D. 1906. It is further ordered that a copy of this notice and order be served by the United States Marshal or his deputies upon such owners of the land to be condemned herein as may be found by said marshal or his deputies within the District of Columbia before the said 6th day of December, A. D. 1906. By the Court: **JOB BARNARD, Justice.**

[Seal] A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 47-1t

**Geo. E. Sullivan, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia and the State of Maryland, respectively, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of David H. Hazen, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscribers, on or before the 19th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 19th day of November, 1906. **HENRY H. HAZEN, 1030 McCulloch st., Balto., Md.; EMMA L. HAZEN, 407 Sixth st., S. W., Wash., D. C.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 14,032. Administration. [Seal] 47-3t

**Legal Notices.**

[Filed November 14th, 1906, J. R. Young, Clerk.]  
**McKenney, Flannery & Hitz, Solicitors**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**Annie B. Strickland, Complainant, v. J. Bryant Tucker, Jr., et al, Defendants.**  
 In Equity, No. 26,621.

**ORDER FOR APPEARANCE OF ABSENT DEFENDANTS.**  
 The object of this suit is to make partition by sale among the heirs at law of Clara B. Walker, deceased, of the land and premises known as lot numbered one hundred and thirty (130) in square numbered four hundred and forty-five (445) in the city of Washington, the same being improved by a brick dwelling-house numbered 604 Q street, northwest, in said city. On motion of the complainant it is, this 14th day of November, 1906, ordered that the defendants, J. Bryant Tucker, Junior, Arabella H. Tucker, Marina H. Hobbs, Nellie F. Munger, Marion C. Hunter, Norman F. Tucker, Sarah P. Pellett, Thomas A. Harwood, Mary A. Harwood, Sarah Harwood, Amos A. Bemis, Clara H. Bemis, Edith S. Leahy, Walter Bingham, Annie M. Shaw, Eugenia Wedger, Bertha E. Bingham, John Harwood Hudson, Eva C. Aiken, Lella A. Freer, W. G. DeA. Hudson, Charles Freeman Holman, Josephine A. Wale, Fanny R. Powers, William A. Burgess, Ella Rathburn, Thomas Arthur Hubbard, William P. McKown, Harry Harwood Haines, Charles M. Deland, Albert V. Deland, Evelina B. Deland, Charles Armit Deland, Carrie E. Tarbell, Etta E. Gay, Joseph H. Craig, Eleanor C. Drake, Norman S. Craig, Grace C. Stork, Annie S. Chapman, Grace Smith Gillis, William Dudley Smith, Catherine S. Smith, and Frederick Bingham, or the unknown heirs, devisees and allies of said Frederick Bingham; and Thomas H. Bingham, or the unknown heirs, devisees, and allies of said Thomas H. Bingham; and Edward Bingham, or the unknown heirs, devisees, and allies of said Edward Bingham, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three (3) months from this date, otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three months in The Washington Law Reporter and The Washington Herald before said day.

[Seal] **HARRY M. CLABAUGH, Chief Justice.** A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. nov 23 90, dec 21 28, jan 18 25

**R. Preston Shealey, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of John Connell, Deceased.**  
 No. 13,993. Administration Docket—  
 Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate by Mary E. Connell, it is ordered, this 16th day of November, A. D. 1906, that Mary Shaughnessy, of Ballabricken, County Limerick, Ireland, and all others concerned, appear in said court on Friday, the 28th day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 47-3t

**P. H. Marshall, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Mary D. Bradford, Deceased.**  
 No. 13,991. Administration Docket 35.  
 Application having been made herein for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by John C. Edwards and Albion K. Parris, it is ordered, this 16th day of November, A. D. 1906, that Katharyn V. Kennedy (minor) and Frank Kennedy (custodian of said minor), and all others concerned, appear in said court on Thursday, the 3rd day of January, A. D. 1907, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 47-3t

**Legal Notices.****Geo. Francis Williams, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Sarah A. Van Derlip, Deceased. No. 14,007.  
Administration Docket 36.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Burr N. Edwards, it is ordered, this 23d day of November, A. D. 1906, that Charles Arnold Phipps and Lucian Holbrook, and all others concerned, appear in said court on Wednesday, the 26th day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 47-3t

**H. B. Moulton and J. H. Lichliter, Attorneys****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of George A. Bartlett, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscribers, on or before the 15th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 15th day of October, 1906. HOSEA B. MOULTON, Washington Loan and Trust Building; JACOB H. LICHLITER, 416 5th St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,560. Administration. [Seal.] 47-3t

**W. C. Sullivan, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of George W. Bates, Deceased.  
No. 13,942, Administration Docket —.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Joseph Stewart, it is ordered this 22d day of November, A. D. 1906, that Mary Newlin, and all others concerned, appear in said court on Monday, the 31st day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] day. ASHLEY M. GOULD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 47-3t

**C. W. Darr, Solicitor****In the Supreme Court of the District of Columbia.****Mary Molloy v. Ellen O'Brien et al.  
Equity No. 28,188.**

Charles W. Darr, Richard A. Curtin, and John J. Brosnan, trustees herein, having reported the sales of part of lot sixteen (16), in square 449, being improved by premises No. 13 and 616 Goat Alley northwest, to Joseph Levazo, for the sum of eight hundred and ten (\$810.00) dollars, lot number seventeen (17), in W. W. Corcoran's subdivision of square 509, improved by premises known as No. 425 "Q" st. northwest, to Clifford A. Borden for the sum of twenty-nine hundred (\$2,900.00) dollars, and the north one-half of lot numbered thirty-nine (39), in Wright and Cox's subdivision of Mount Pleasant and Pleasant Plains, being improved by premises known as No. 2222 Ninth street northwest, to John M. Mahaney, for the sum of nine hundred and seventy-five (\$975.00) dollars, it is by the court, this 16th day of November, A. D. 1906, ordered that said trustees be, and they are hereby, authorized to accept said offers, and, upon compliance with the terms of said sale, said sale shall stand confirmed, unless cause to the contrary be shown on or before the 26th day of December, A. D. 1906. Provided a copy of this order be published in The Washington Law Reporter and The Washington Herald once a week for three successive weeks before the last mentioned date. By the Court: HARRY M. CLA-BAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 47-3t

**Legal Notices.****SECOND INSERTION.****George E. Tralles, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia, granted letters of administration on the estate of Ellen Larguey, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Tuesday, the 4th day of December, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 15th day of November, 1906. ELLEN KILROY, by George E. Tralles, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,310. Administration. [Seal.] 46-3t

**Phillip Walker, Solicitor****In the Supreme Court of the District of Columbia.****Alfred H. Ritter v. Margaret M. Ritter and Samuel E. Love. No. 26,684. Equity Doc. 58.**

The object of this suit is to obtain an absolute divorce from the defendant, Margaret M. Ritter, because of her adultery with defendant, Samuel E. Love, and custody of infant child. On motion of the complainant, it is, this 16th day of November, 1906, ordered that the defendants, Margaret M. Ritter and Samuel E. Love, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Wash-

[Seal] ington Law Reporter and The Washington Post before said day. ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by R. P. Belew, Asst. Clerk. 46-3t

**Harold H. Simms, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Charles W. Kelly, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of November, 1906. JULIA B. KELLY, Langdon, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,654. Administration. [Seal.] 46-3t

**Wm. A. McKenney, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Lewis J. Davis, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 15th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands, this 15th day of November, 1906. PHILIP MAURO, 620 F st N. W.; AMERICAN SECURITY AND TRUST CO., by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,911. Administration. [Seal.] 46-3t

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street N. W.

**Legal Notices.****Malcolm Hufty, Solicitor**

**In the Supreme Court of the District of Columbia.**  
**Edith M. Johnson, Complainant, v. Albanus S. T. Johnson, Defendant.** Equity, No. 26,454.

The object of this suit is to obtain a divorce from the bonds of marriage on the ground of adultery. On motion of the complainant, by her solicitor, Malcolm Hufty, it is, this 12th day of November, 1906, ordered that the defendant, Albanus S. T. Johnson, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, otherwise the cause will be proceeded with as in case of default. Provided this order be published in The Washington

Law Reporter and The Washington Times once a week for three successive weeks.  
 [Seal] HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, clerk, by Wms. F. Lemon, Asst. Clerk. 46-31

**Walter A. Johnston, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Anna Robinson alias Anna Thornton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of November, 1906. BERTT H. BROCKWAY, 510 M st. N.W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,996. Admn. [Seal.] 46-31

**Irving Williamson and James F. Bundy, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Rachel Denton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 14th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of November, 1906. ALBERT R. COLLINS, 490 E st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,755. Administration. [Seal.] 46-31

**J. Edgar Smith, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Dexter A. Snow, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 13th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 13th day of November, 1906. CHESTER A. SNOW, 1812 Newton st.; BETTIE A. CRUSH, 712 8th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,001. Administration. [Seal.] 46-31

**John J. Brosnan, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Thomas Coakley, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 13th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 13th day of November, 1906. MAURICE FITZGERALD, 512 4½ st. S. W.; WILLIAM RYAN, 221 3d st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,816. Administration. [Seal.] 46-31

**Legal Notices.**

**James A. Toomey and W. D. Sullivan, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the State of Maryland and the District of Columbia, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Owen Woods, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscribers, on or before the 13th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 13th day of November, 1906. FRANCIS X. MCKINNY, St. Charles College, Ellicott City, Md.; HENRY J. McDERMOTT, 2111 12th st. N. W., Wash., D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,702. Administration. [Seal.] 46-31

**Tucker & Kenyon, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of May A. Brooke, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 13th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 13th day of November, 1906. JULIA McALLISTER, 940 K st. N. W.; ERNEST G. THOMPSON, 681 Penn. ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,917. Administration. [Seal.] 46-31

**Carlisle & Johnson, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Elizabeth Flodstrom, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscriber, on or before the 14th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of November, 1906. CLARA A. VANSCIVER, Brentwood, Md. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,011. Administration. [Seal.] 46-31

**Charles J. Murphy, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Walter Scott Fowler, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscriber, on or before the 14th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of November, 1906. WILLIAM W. McRONEY, 156 N st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,013. Administration. [Seal.] 46-31

**R. E. Mattingly, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Holding Equity Court.**

**Mattie Server Meloney, Complainant, v. Clarence W. Meloney and Florence Chilcott, Defendants.** Equity, No. 26,574.

The object of this suit is to obtain a divorce from the bonds of marriage on the ground of adultery. On motion of the complainant, by her solicitor, Robert E. Mattingly, it is, this 12th day of November, A. D. 1906, ordered that the defendants, Clarence W. Meloney and Florence Chilcott, cause their appearances to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order. Provided this order be published in The Washington Law Reporter and in The Washington Times once a week for three successive weeks. By the Court: HARRY M. CLABAUGH, Chief Justice. A true copy.

[Seal] Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 46-31



**Legal Notices.****Birney & Woodward, Solicitors**

**In the Supreme Court of the District of Columbia,  
The Trust Company of America, Complainant, v. Mu-  
riel Cridler et al., Defendants.**

No. 26,561. Equity.

The object of this suit is to procure the appointment of a trustee in the place of James K. Fitzgibbon (alleged lunatic), to carry out the trusts declared in a deed of trust made by the defendants, Muriel and Thomas W. Cridler, to said Fitzgibbon and one James Ross Curran. On motion of the complainant, it is, this 14th day of November, 1906, ordered that the defendants, Muriel Cridler and Thomas W. Cridler, cause there appearance to be entered herein on before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order is to be published in The Washington Post and The

Washington Law Reporter once a week for three successive weeks. By the Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 46-3t

**Leckie & Fulton, Attorneys**

**In the Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**In re Estate of Margaret McHenry, Deceased.**  
Probate, No. 13,648.

The executor and trustee, William A. Foy, in the above entitled cause, having reported an offer in writing to purchase for the sum of twenty-two hundred and fifty dollars (\$2,250) in cash, the following property, to wit: Part of lot 8 in Kelly and Thompson's subdivision of lots in square numbered 733, as per plat recorded in the office of the surveyor for the District of Columbia in liber W. F. at folio 186, beginning at the southwest corner of said lot; thence north along First street 16 feet; thence east 100 feet; thence south 18 feet to "D" street; thence west along "D" street 100 feet to the beginning, it is, this 9th day of November, A. D. 1906, ordered that the said executor and trustee be, and he is hereby, authorized to accept said offer, and upon compliance with the terms of sale by the purchaser, the said sale shall stand ratified and confirmed, unless cause to the contrary be shown on or before the 10th day of December, A. D. 1906. Provided a copy of this order be published in The Washington Law Reporter once a week for three

[Seal] successive weeks before said last mentioned date. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 46-3t

**John B. Larner, Attorney**

**Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Mary E. Letts, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 3d day of December, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 18th day of November, 1906. THE WASHINGTON LOAN AND TRUST COMPANY, by Frederick Eichelberger, by John B. Larner, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,143. Administration. [Seal.] 46-3t

**Padget & Forrest, and John E. McNally, Solicitors**

**In the Supreme Court of the District of Columbia,  
Mary Doran v. John Doran et al.**

Equity, No. 25,881.

John E. McNally and H. L. Rush, trustees herein named, having reported the sale of lot 151 in W. W. McCullough's subdivision of lots in square No. 235, to Jacob Diemer for the sum of \$5,000, it is, by the court, this 8th day of November, 1906, ordered that the said sale be finally ratified and confirmed, unless cause to the contrary be shown on or before the 10th day of December, 1906. Provided a copy of this order be published in The Washington Post and The Washington Law Reporter once a week for three successive weeks

[Seal] before said last named day. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 46-3t

**Legal Notices.****William C. Prentiss, Attorney**

**Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Kuni-gunda Fedarwisch, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 3d day of December, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 14th day of November, 1906. JOHN T. BRANSON, by William C. Prentiss, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,177. Adm. [Seal.] 46-3t

**Albert Sillers, Attorney**

**Supreme Court of the District of Columbia,  
Holding Probate Court.**

**Estate of Mary McCullough, Deceased.**

No. 12,916. Administration Docket —

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Robert E. McCullough, it is ordered, this 5th day of November, A. D. 1906, that George C. McCullough and Mary McCullough and all others concerned appear in said court on Monday, the 10th day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] HARRY M. CLABAUGH, Chief Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 46-3t

**Berry & Minor, Attorneys**

**Supreme Court of the District of Columbia,  
Holding Probate Court.**

**Estate of Augusta R. Thurlow, Deceased.**

No. 13,956. Administration Docket 35.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Elizabeth J. Scott, it is ordered this 12th day of November, A. D. 1906, that Francis M. Thurlow, Stephen Henry Thurlow, Robert Thurlow, Frank Thurlow (a minor), Albert Thurlow (a minor), and all others concerned, appear in court on Monday, the 17th day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return

[Seal] day. HARRY M. CLABAUGH, Chief Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 46-3t

**Wm. A. McKenney, Attorney**

**Supreme Court of the District of Columbia,  
Holding Probate Court.**

**Estate of John McAllister Schofield, Deceased.**

No. 13,948. Administration Docket —

Application having been made herein for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by Georgia K. Schofield, it is ordered, this 12th day of November, A. D. 1906, that Laura Schofield, Richard McA. Schofield, Mary S. Andrews, and Georgina Schofield, a minor, and all others concerned, appear in said court on Monday, the 17th day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return

[Seal] day. HARRY M. CLABAUGH, Chief Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 46-3t



**Legal Notices.**

[Filed November 15, 1906. J. R. Young, Clerk.]

**W. H. Linkins, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**

**Benina M. Glover, Complainant, v. John J. Leroy et al., Defendants.** In Equity. No. 26,291.

The object of this suit is to declare the title of the complainant to part of original lot numbered eight (8), in square numbered eighty (80), in the city of Washington, District of Columbia, beginning for the same at the northwest corner of said lot and running thence south along the line of Twenty-second street, twenty-eight (28) feet; thence east sixty-two (62) feet two (2) inches, to the easterly line thereof; thence north twenty-eight (28) feet; and thence west sixty-two (62) feet two (2) inches, to the place of beginning, to be good of record in her in fee simple by reason of the adverse possession. On motion of the complainant, by her solicitor, William H. Linkins, it is, by the court, this 15th day of November, 1906, ordered that the defendants, John J. Leroy, Jacob Moyer, Jacob Myer, Bernard Glipin, Thomas J. Lowery, and Thomas Weatherall, or Thomas Weatherall, and John Barcroft, executors, and John Little, George W. Harkness, trustees, Forrester Young, Sarah McTiers, and Thomas Weaver, and their or either of their unknown heirs, devisees, grantees, or alienees, either immediate or mediate, or the heirs of such person, or as claiming under, by or through either of said parties, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise will be proceeded with as in case of default. Provided this order shall be published once a week for four successive weeks in The Washington Law Reporter and The Evening Star, before said return day, two of which publications shall be the last two weeks in November, 1906, it appearing to the Court, upon good cause shown, based upon the affidavit filed herein, that further publication in this cause is unnecessary.

[Seal] **ASHLEY M. GOULD, Justice.** A true copy.  
 Test: J. R. Young, Clerk, by F. L. Cunningham, Asst. Clerk. 46-4t

**THIRD INSERTION.**

**Cole & Donaldson, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Oscar Teschner, Plain'iff, v. New England Tonopah Mining Company, Defendant.**

At Law, No. 48,727.

The object of this suit is to recover from the defendant the sum of \$387.50 compensation as an employee of the defendant and disbursements made for defendant by plaintiff, more particularly set out in the declaration in this case, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 5th day of November, 1906, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter and

[Seal] The Washington Herald before said day. By the court: **WRIGHT, Justice.** A true copy.  
 Test: J. R. Young, Clerk, by Alf. G. Buhrman, Asst. Clerk. 45-3t

**W. H. Marlow, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Clara Herold, Complainant, v. Oscar W. Gardner et al., Defendants.** Equity, No. 26,177.

Walter H. Marlow, Jr., the trustee herein, having reported sale at public auction of that part of lot ten, square eight hundred and forty-six, in the city of Washington, District of Columbia, beginning for the same at a point ninety feet south of the northwest corner of said square and running thence south thirty feet; thence east ninety-two feet and one inch; thence north thirty feet, and thence west ninety-two feet and one inch to place of beginning, to Clara Herold for twenty-nine hundred and fifty dollars, it is, this 2d day of November, A. D. 1906, ordered and decreed that the said sale be, and it is hereby, finally ratified and confirmed, unless cause to the contrary be shown on or before December 3d, 1906. Provided a copy of this order be published once a week for three successive weeks before said last-mentioned day in The Washington Law Reporter. **ASHLEY M. GOULD, Justice.** True copy. Test: J. R. Young, Clerk, by R. P. Belew, Asst. Clerk. 45-3t

**Legal Notices.**

**W. H. Sholes and Reginald S. Haldekoper, Solicitors**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**

**Charles M. Woolf et al., Complainants, v. The Unknown Heirs, Devisees, and Alienees of John Ray and Sarah Ray, Deceased, et al., Defendants.** In Equity, No. 26,595.

The object of this suit is to declare title by adverse possession in the trustees herein of certain land and premises, situate in the county of Washington, in the District of Columbia, and known and distinguished as all that portion of certain tracts of land situate in said District of Columbia and known as "John and Mary's" and "Trouble Ended," and otherwise known as "Tucker's Farm," and described as follows: "Beginning at a bound stone on the north side of the road from Bladensburg at the end of the division line, between Enoch Tucker's land and that of N. Queen's heirs, and running with said division line north twenty and one-half (20½) degrees, west one hundred and thirteen (113) perches to the bound stone on the south side of the road from Rock Creek (church); thence east six and sixty-one one-hundredths (6 61/100) perches with said road; thence north seventy and one-half degrees (70½), east fourteen and eight one-hundredths (14 8/100) perches; thence north eighty-five and three-fourth (85¾) degrees, east nine and fifth-two one-hundredths (9 52/100) perches; thence south eighty-two and one-half (82½) degrees, east seventy-four and four one-hundredths (74 4/100) perches with the said road to the Sargent Road; thence with Sargent Road south seven and one-half (7½) degrees, east thirty-seven and seventy-six one-hundredths (37 76/100) perches to a stone on the north side of the first mentioned road, and thence with said road south forty-six (46) and one-half (½) degrees, west ninety-three and sixty-four one-hundredths (93 64/100) perches to the beginning, containing about forty-four (44) acres, two (2) rods and ten (10) perches, and being the same land conveyed by deed from James G. Payne, trustee, to Louis D. Means and recorded among the land records of the District of Columbia in liber 1159, at folio 167 et seq., except nine thousand three hundred and forty-seven and fifty-one one-hundredths (9,347.51) square feet more or less of said land heretofore conveyed by the said Louis D. Means to William Nelson by deed duly recorded among the land records of the said District of Columbia in liber 1382, at folio 417 et seq., and described by metes and bounds as follows: Beginning at the intersection of the Sargent and Bunker Hill Roads; thence with Bunker Hill Road south forty-seven (47) degrees, west fifty (50) feet; thence north forty-three (43) degrees, west one hundred and fourteen (114) feet and nine (9) inches to a ditch; thence with said ditch north fifty-five (55) degrees, east one hundred and twenty-three (123) feet and seventy-nine one-hundredths (79 9/100) of a foot to the Sargent Road; thence with said road south six and one-half (6½) degrees, east one hundred and twenty-three (123) feet to the place of beginning." On motion of the complainants, it is, this 7th day of November, A. D. 1906, ordered that the defendants, the unknown heirs, devisees, and alienees of John Ray and Sarah Ray, his wife, deceased; Annie E. Babcock, Campbell Elias Babcock, Orville E. Babcock, Adolph Borie Babcock, or their unknown heirs, devisees, and alienees, cause their appearance to be entered herein on or before the fortieth (40th) day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order, good cause having been shown to the satisfaction of the court; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald. By the Court: **ASHLEY M. GOULD, Justice.** True copy. Test: J. R. Young, Clerk, by R. P. Belew, Asst. Clerk. 45-3t

**Clarence R. Wilson, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Hannah R. Ashton**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 5th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 5th day of November, 1906. **J. HUBLEY ASHTON**, 622 F st. N. W.; **ELIZABETH ASHTON WILSON**, 1640 21st st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,002. Administration. [Seal.] 45-3t

**Legal Notices.**

**Thomas Walker, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Sealina Thurston, Deceased.**  
 No. 13,949. Administration Docket 35.

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. l. a., on said estate, by Mary E. McIntosh, it is ordered, this 5th day of November, A. D. 1906, that George M. Thurston and Frank L. Thurston, and all others concerned, appear in said court on Tuesday, the 11th day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. HARRY M. CLABAUGH, Chief Justice. Attest: James

[Seal] Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 45-3t

**Millan & Smith, Solicitors**

**In the Supreme Court of the District of Columbia,**  
**John D. W. Moore v. Elizabeth Reid et al.**

Equity No. 26,511. Docket 59.

The object of this suit is partition by sale of parts of lots five (5) and six (6) in square eleven hundred and ninety-three (1193) in the city of Washington, District of Columbia, and three small islands in the Potomac River in said District, known as the Three Sisters, more fully described in the bill herein, and a statement and settlement of the account of complainant against the estate of John Moore, deceased. On motion of complainant it is, this 3d day of November, A. D. 1906, ordered that the defendants, Mary B. Moore, Kate D. Moore, Nannie B. Moore, Max Hoblitzell, Glen M. Baillie, George M. Moore, Lewis B. Moore, Robert S. Moore, and Loula Willard, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Evening Star and The Washington Law Reporter before said day. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 45-3t

**John L. Cassin and P. H. Marshall, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**

**Henry G. Bergling et al v. Eleanora Nolte et al.**  
 Equity No. 23,607.

John L. Cassin and Percival H. Marshall, trustees, having reported to the court the sale of the northern part of lot numbered twenty-six (26) in Naylor and Rothwell's recorded subdivision of square numbered four hundred and twenty-five (425), for nine thousand five hundred and fifty (\$9,550) dollars; it is by the court this 8th day of November, 1906, adjudged, ordered and decreed that said sale be confirmed unless cause to the contrary be shown on or before December 10th, 1906. Provided a copy of this order be published once a week for three weeks in The Washington Law Reporter and

The Evening Star before the last-mentioned [Seal] day. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 45-3t

**J. A. Maedel, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Henry Hinke, Deceased.**  
 No. 13,975. Administration Docket—.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Camilla Hinke, it is ordered, this 2d day of November, A. D. 1906, that the unknown heirs at law of the said Henry Hinke, and all others concerned, appear in said court on Monday, the 10th day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice.

[Seal] Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 45-3t

**Legal Notices.**

**Cole & Donaldson, Attorneys**

**In the Supreme Court of the District of Columbia.**  
**Samuel J. Harman et al., Plaintiffs, v. New England**  
**Tonopah Mining Company, Defendant.**

At Law, No. 48,726.

The object of this suit is to recover the sum of \$2,306.28, counsel fees and disbursements claimed of the defendant by the plaintiffs, more particularly set out in the declaration filed in this case, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 5th day of November, 1906, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter and The Washington Herald

[Seal] before said day. By the Court: WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by Alf. G. Buhrman, Asst. Clerk. 45-3t

**Geo. R. Linkins, Attorney**

**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**In re Will of Katherine Frawley, Deceased.**  
 Administration. No. 13,636.  
 ORDER OF PUBLICATION.

Michael J. Frawley having made application to the Supreme Court of the District of Columbia, holding a Probate Court, for probate and record of the last will and testament of said Katherine Frawley, deceased, and for letters of administration de bonis non cum testamento annexo to George R. Linkins, it is, this 7th day of November, A. D. 1906, ordered that Anastasia Kelley, Patrick Frawley, James Frawley, Kate McMahon, Patrick S. Frawley, Mary McMahon, Ann O'Loughlin, John O'Loughlin, Patrick O'Loughlin, and the unknown heirs at law and next of kin of said Katherine Frawley, deceased, and all others concerned, appear in said court on Monday, the 10th day of December, A. D. 1906, at 10 o'clock A. M., and show cause, if any they have, why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star, once in each of three successive weeks before the return day herein mentioned, the first publication to [Seal] be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 45-3t

**Jas. Gillin and H. T. Winfield, Attorneys**

**In the Supreme Court of the District of Columbia.**  
**Frank Fritsch, Plaintiff, v. Elizabeth C. Prall, De-**  
**fendant.**

At Law, No. 48,703. Docket 58.

The object of this suit is to recover the sum of two thousand one hundred fifty-five and eighty-nine one-hundredths (\$2,155.89) dollars, the same being the amount of a judgment rendered against the said Elizabeth C. Prall in favor of the said Frank Fritsch, together with costs and disbursements in relation thereto in the Supreme Court of the State of New York in and for the county of Kings, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 2d day of November, 1906, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before

[Seal] said day. By the Court: JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by Alf. G. Buhrman, Asst. Clerk. 45-3t

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**Legal Notices.****Maurice J. Pierce, Attorney**

Notice is hereby given of the filing of a petition in the Supreme Court of the District of Columbia, on the 1st day of November, 1906, by William Marion Smith, praying a decree changing his name to William Marion Irby Smith, for reasons set forth in said petition. WILLIAM MARION SMITH, 722 Munsey Building, Washington, D. C. 45-81

**FOURTH INSERTION.**

[Filed November 1, 1906.]

**A. Leftwich Sinclair, Attorney**

In the Supreme Court of the District of Columbia, Holding a Special Term as a District Court of the United States for the District of Columbia.

In the Matter of the Payment of Damages Resulting to Adjacent Property From Changes in the Grades of Streets, Avenues, and Alleys Authorized by the Act of Congress Approved February 28, 1903, Relating to the Construction of a Union Railroad Station in the District of Columbia.

District Court No. 671.

Notice is hereby given that we, the undersigned, having been designated and appointed by the Supreme Court of the District of Columbia, holding a special term as a United States District Court for the District of Columbia, as a commission to appraise the damages resulting to adjacent property from changes in the grades of streets, avenues, and alleys authorized by the act of Congress approved February 28, 1903, relating to the construction of a union railroad station in the District of Columbia, will meet at 10.30 o'clock A. M., on Wednesday, the 12th day of December, A. D. 1906, at the United States Court House (City Hall), in the District of Columbia, in a room to be assigned us by the United States Marshal for said District, for the purpose of viewing the property affected by the changes of the grades of the following-named streets, avenues, and alleys, and hearing testimony touching the damages resulting to real property from said changes of grade, in accordance with the terms and provisions of the act of Congress approved April 22, 1904, entitled "An act to provide for payment of damages on account of changes due to construction of the Union Station, District of Columbia," to wit: Second street northeast, Third street northeast, and K street northeast, around square numbered seven hundred and fifty (750), and the alleys and minor street (Parker street) in said square; Delaware avenue and Second street northeast, around square numbered seven hundred and forty-eight (748); and Third street northeast, between L and M streets. All owners of real property damaged by the changes in the grades of said streets, avenues, or alleys will file a petition with us, in this cause, signed and sworn to, for an allowance of damages within sixty (60) days after the said 12th day of December, A. D. 1906. The aforesaid act of Congress approved April 22, 1904, provides that upon the failure of any such owner to thus present his claim, within said period, his right to do so shall cease and determine. CHARLES A. BAKER, GEORGE W. MOSS, GEORGE W. SPRANSY, Commission to Appraise Damages. A true copy. Test: J. R. Young, Clerk, by T. E. Cunningham, Asst. Clerk.

nov. 2, 9, 16, 23, 30; dec. 7.

**FIFTH INSERTION.****Ralston & Siddons, Solicitors**

In the Supreme Court of the District of Columbia. Joseph Ralston Morris v. The Unknown Heirs, Devisees, and Allenees of Appolona Whitehair, and The Unknown Heirs, Devisees, and Allenees of Justinian Mayberry. Equity No. 26,493. Doc. 58.

The object of this suit is to obtain a decree of this court vesting title by adverse possession in the premises known as sublot nineteen (19) in square one hundred and three (103), Washington, D. C., as per plat recorded in Liber H. D. C., folio 145 of the District of Columbia land records. On motion of the complainant, by Ralston & Siddons, his solicitors, it is, this 18th day of September, 1906, ordered that the defendants, the unknown heirs, devisees, and allenees of Appolona Whitehair, and the unknown heirs, devisees, and allenees of Justinian Mayberry, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three months in The Washington

Law Reporter and The Evening Star before said date. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk.

sept 21, 28; oct 19, 26; nov 23, 30

**Legal Notices.**

[Filed October 22, 1906.]

**A. Leftwich Sinclair, Attorney**

In the Supreme Court of the District of Columbia, Holding a Special Term as a District Court of the United States for the District of Columbia.

In the Matter of the Payment of Damages Resulting to Adjacent Property from Changes in the Grade of Streets, Avenues, and Alleys Authorized by the Act of Congress Approved February 12, 1901, Relative to the Elimination of Grade Crossings on the Line of the Baltimore and Potomac Railroad Company, in the District of Columbia. District Court No. 671.

Notice is hereby given that we, the undersigned, having been designated and appointed by the Supreme Court of the District of Columbia, holding a special term as a United States District Court for the District of Columbia, as a commission to appraise the damages resulting to adjacent property from changes of the grades of streets, avenues, and alleys authorized by the act of Congress approved February 12, 1901, relative to the elimination of grade crossings on the line of the Baltimore and Potomac Railroad Company in the District of Columbia, will meet at 10.30 o'clock A. M., on Friday, the 30th day of November, A. D. 1906, at the United States Court House (City Hall), in said District, in a room to be assigned us by the United States Marshal for said District, for the purpose of viewing the property affected by the changes in the grades of the following-named streets, and hearing testimony touching the damages resulting to real property from said changes of grades, pursuant to the terms and provisions of an act of Congress approved June 29, 1906, entitled "An act to provide for payment of damages on account of changes of grade due to the elimination of grade crossings on the line of the Philadelphia, Baltimore and Washington Railroad Company," to wit: I street S. E., between 5th street and Virginia avenue; I street S. E., between 6th and 7th streets; K street S. E., between 6th and 7th streets; K street S. E., between 7th street and Virginia avenue; 6th street S. E., between G and I streets; 6th street S. E., between Virginia avenue and K street; Virginia avenue S. E., between 5th and 6th streets; Virginia avenue S. E., between 6th and 7th streets; Virginia avenue S. E., between 7th and 8th streets; Virginia avenue S. E., between 2d and 3d streets; H street S. E., between 1st and 2d streets. All owners of real property damaged by the changes in the grades of said streets will file a petition with us, in this cause, signed and sworn to, for an allowance of damages, within twelve months after the said 30th day of November, A. D. 1906. The aforesaid act of Congress approved June 29, 1906, provides that upon the failure of any such owner to thus present his claim within said period, his right to do so shall cease and determine. CHARLES A. BAKER, GEORGE W. MOSS, GEORGE W. SPRANSY, Commission to Appraise Damages. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk.

oct. 26, nov. 2, 9, 16, 23

**SIXTH INSERTION.**

[Filed July 20, 1906. J. R. Young, Clerk.]

**W. E. Poulton, Jr., Solicitor**

In the Supreme Court of the District of Columbia. Cotter T. Bride v. The Unknown Heirs, Devisees, and Allenees of James Neale, "of Bennet," Deceased. Equity No. 26,148. Doc. No. 58.

On motion of complainant, it is, this 20th day of July, A. D. 1906, ordered that the defendants, the unknown heirs, devisees, and allenees of James Neale, "of Bennet," deceased, cause their appearance to be entered herein, on or before the first rule day, occurring three (3) months after the day of the first publication of this order; otherwise this cause will be proceeded with as in case of default. The object of this suit is to declare the title of complainant to lot numbered two (2) in square numbered five hundred and ninety-nine (599), in the city of Washington, in the District of Columbia, to be good in fee simple by adverse possession.

[Seal] By the court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk.

sept 21, 28; oct 19, 26; nov 16, 23

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WASHINGTON, D. C. - - - NOVEMBER 30, 1906

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## DECISIONS BY THE COURT OF APPEALS.

Street Railways; Transfers; Ejection of Passenger Presenting Invalid Transfer.

In *Shortleeves v. Capital Traction Company*, the action was to recover damages for an alleged unlawful ejection from one of the defendant's cars. It appeared that the plaintiff was a passenger on a Pennsylvania avenue car, and received a transfer to the F and G street line which entitled him to board the latter car at Seventeenth street and Pennsylvania avenue. Instead of waiting until the car on which he was riding reached Seventeenth street, he left it at Fifteenth street and there boarded the F and G street car. The conductor of the latter car refused to accept the transfer, on the ground that it was not good at the Fifteenth street junction and insisted that plaintiff must either pay his fare or leave the car. On his refusal to do either the car was stopped, and the motor-man went to plaintiff, who, saying he wished to see what was right, got off. There was some conflict in the testimony as to whether the transfer was tendered to the conductor by plaintiff and refused before or after the car reached the Seventeenth street junction, but the verdict of the jury established that the tender and refusal, followed by a demand that plaintiff should pay his fare or leave the car, occurred prior to the car reaching that point. The verdict and judgment below were in favor of defendant, and the judgment is affirmed by the

Court of Appeals, in an opinion by Mr. Justice McComas.

## Mandamus; Bill of Exceptions; Failure to Present in Time.

In *Johnson-Wynne Co. v. Wright*, the petitioners sought a writ of mandamus to compel the respondent, as a justice of the Supreme Court of the District, to settle a bill of exceptions. It appeared that the judgment was entered in the court below on June 21, 1906. The respondent, presiding in Circuit Court No. 1, in which the trial was had, adjourned said term on August 1 until September 30, as provided by the rules of court, and left the District for his vacation on August 1, returning on September 30, when he resumed the business of the unexpired term of that court. The appeal bond was filed July 16, 1906, but no further action was taken by appellants (the petitioners) until August 8, 1906, the thirty-eighth day after entry of the judgment, when they filed with the clerk the proposed bill of exceptions, a copy of which was delivered to opposing counsel, with a notice that it would be presented to the court for settlement on August 20, or as soon thereafter as practicable. It was not in fact presented to the respondent for settlement until some time in October, when, on objection by the plaintiff in the judgment, he refused to settle the same, because of the failure of the defendant to submit a copy of the proposed bill of exceptions to opposing counsel eight days, exclusive of Sundays, before the last day on which, without an extension of the time, he was permitted by Rule 55 to settle it. The defendants thereupon filed in the Court of Appeals a petition for a writ of mandamus; but that court, in an opinion by Mr. Chief Justice Shepard, dismisses the petition.

## Appeals; Costs.

In *Columbia National Sand Dredging Co. v. Morton*, in which the decree of the court below was reversed and the bill directed to be dismissed on the ground that the court below was without jurisdiction of the case, the decree of the Court of Appeals was silent in respect to the question of costs. A motion was made by the appellee to reform the decree so as to show a reversal without costs to either party. The question of jurisdiction was not raised by the defendants in the court below; and in the Court of Appeals the court of its own motion raised the objection. Under these circumstances, the Court of Appeals, in an opinion by Mr. Chief Justice Shepard, decrees that each party pay the costs incurred by him in that court.

# Court of Appeals of the District of Columbia.

ROBERT W. BROWN, EXECUTOR, ETC.,  
APPELLANT,

v.

THE GRAND FOUNTAIN OF THE UNITED  
ORDER OF TRUE REFORMERS ET AL.

BENEFICIAL ASSOCIATIONS; CONTRACTS; CHANGE OF  
CHARTER.

An incorporated joint stock association issued to C two certificates, or policies of insurance, by the terms of which the amounts stipulated were to be paid at her death to her "heirs or assigns." Neither certificate contained a reservation of power to change or modify its provisions. Subsequently the charter of the association was changed so as to restrict beneficiaries of policy-holders to the family, heirs, blood relatives, affianced husband or wife, or persons dependent upon the policy-holder. C assigned the certificate to her executor. After her death claim was made to the proceeds of the certificates by him and also by certain of her next of kin. On a bill of interpleader filed by the association, held that the amendment to the charter was not binding on C to the extent of modifying her contracts entered into prior thereto, and the fund in controversy awarded to her assignee and executor.

No. 1884. Decided November 7, 1906.

APPEAL from a decree of the Supreme Court of the District of Columbia, in Equity, No. 25,546, on a bill of interpleader to determine the rights of rival claimants to the proceeds of two certificates of insurance. Reversed.

Mr A. A. Birney and Mr. J. H. Stewart for the appellant.

Mr. George H. White for the appellees.

Mr. Justice ROBB delivered the opinion of the Court:

This is an appeal from a decree of the Supreme Court of the District of Columbia adjudging the heirs at law and next of kin of Milly Cook, deceased, to be entitled to the death benefits provided for in two certificates issued to said decedent by the Grand Fountain of the United Order of True Reformers.

It appears that the Grand Fountain of the United Order of True Reformers, which we shall in this opinion refer to as "the Grand Fountain," was incorporated as a joint stock company on April 4, 1883, with an authorized capital stock of "not less than one hundred dollars nor more than ten thousand dollars, to be divided into shares of the value of five dollars each." The purposes for which the Grand Fountain was incorporated, as set forth in the second paragraph of its charter, were as follows: "The purposes, for which it is formed, are to provide a place of burial for deceased members and to defray the expenses of their funerals; to assist in the support and education of their widows and orphans, and in this connection to provide what is to be known as an endowment or mutual benefit fund; to give aid and assistance to its members in times of sickness and distress, and for such other benevolent objects as may be necessary."

On May 5, 1886, *Levy Fountain No. 65, Washington, D. C.*, issued to Millie Cook a certificate or policy entitling her to membership in said *Levy Fountain*, "and of the mutual benefit degree of the Grand Fountain of the United Order of True Reformers, subject to the rules and regulations thereof, which are contained in the constitution, the application, and investiga-

tion blanks, which are the basis of this contract, as if they were present in this certificate."

In this certificate or policy the Grand Fountain promised "to pay to her heirs or assigns, or to any person or persons named in this certificate \$125.00—100 dollars at the time of death of the person above named in this certificate or policy; provided that the said person above named was a member in good standing at the time of death." The application upon which this certificate was issued does not appear in the record.

On June 5, 1897, a second certificate was issued to Millie Cook, entitling her to membership in "the class department of the mutual benefit degree of the Grand Fountain of the United Order of True Reformers," in consideration of the representations, warranties, and agreements made to it in the application, and the payment of an admission fee, and annual or quarterly dues, as designated in the application for this certificate as if herein set out at length."

This certificate promised "to pay to the heirs or assigns of the deceased member above named the whole assessment of the benefited membership of class E, not to exceed \$500.00, which is the full face value of this certificate."

It was stipulated that the only provision in the application upon which this certificate was issued in any way touching the person or persons to whom benefits should be paid is as follows:

"I, Millie Cook, agree to pay into the above class department on the date of this application the sum of \$5.50 admission benefit fee to class E, and an annual payment of \$11.40, divided into four quarterly payments at \$2.85 per quarter. I further agree that at my death my heirs or assigns shall receive fifty-five cents per member, the assessment of the benefited membership of class E not to exceed \$500.00, which shall cause a forfeiture of this agreement and release the class department of the Grand Fountain of the United Order of True Reformers from further obligation."

On July 1, 1898, the act of March 3, 1898, of the legislature of Virginia "to define and regulate fraternal beneficiary associations, orders, or societies," became effective.

Section 2 of the original charter of the Grand Fountain was amended August 8, 1898, to read as follows: "The said corporation shall issue certificates of membership to its members and shall pay death benefits to the heirs, assigns, personal or legal representatives of the deceased members."

The charter of the Grand Fountain was again amended March 21, 1901, and, in this amended charter, benefits were restricted "to the family, heirs, blood relatives, affianced husband, affianced wife, or to persons dependent upon the said member, as the member may direct."

This amendment to the charter purports to have been made as the result of resolutions adopted at a "general meeting of the members (or stockholders as they are sometimes designated) of the Grand Fountain of the United Order of True Reformers, held in the city of Richmond, Va., the 1st day of September, 1896, all of the said members being present in person or by proxy." It does not appear in the record that Milly Cook was either a stockholder or a

member of the Grand Fountain, the certificate merely showing her to be a member of Levy Fountain, a subordinate Fountain, located in Washington, D. C.

Slight changes were made in the constitution of the Grand Fountain prior to the above amendment in 1901, but it is unnecessary to notice these, as they in no way affected the original contract.

The two certificates were assigned by Milly Cook to the appellant as her executor on August 7, 1903.

It appears Milly Cook died October 4, 1904, leaving a will in which she appointed appellant as her executor.

On July 6, 1905, the Grand Fountain filed its bill of interpleader against appellant as said executor and as assignee of the two certificates, and against Sarah Edwards and Ellen Spencer, setting up the death of said Milly Cook and that appellant was her executor and also assignee of the two certificates, and that her heirs at law and next of kin were the said Sarah and Ellen, her sister and niece, respectively, and praying that these three parties might interplead together so that it might be determined to whom the said sum of \$625 ought to be paid, and attached as exhibits to its bill copies of the pleadings in a suit at law brought by appellant against the Grand Fountain to recover said sum.

The answer of said defendants Sarah and Ellen prayed for payment of said sum to them, as also the answer of appellant prayed for payment to him. With his answer to the bill appellant attached as exhibits copies of the two certificates for \$500 and \$125, and the two assignments of same reading, respectively, as follows:

"I, Millia Cook, do hereby assign all my claim above mentioned in this certificate, at my death, to Dr. Robert W. Brown, my executor, of Washington, D. C. Done at Washington, D. C., this seventh (7th) day of August, A. D. 1903.

her  
MILLIA x COOK.  
mark.

Witness:

JAMES H. WINSLOW.

Witness:

CHARLES H. HOWARD."

"I, Millia Cook, do hereby decree and sign all my claim above mentioned in this certificate or policy, at my death, to Dr. Robert W. Brown, my my executor. Done at Washington, D. C., this seventh (7th) day of August, A. D. 1903.

her  
MILLIA x COOK.  
mark

Witness:

CHARLES H. HOWARD.

Witness:

JAMES H. WINSLOW."

The decree of the court below was that the said Sarah Edwards and Ellen Spencer, being the heirs at law and next of kin of the said deceased member, should be paid the death benefits, \$625.

Appellant noted and perfected his appeal to this court.

As stated by counsel, the issue in this case is

the narrow one, whether or not the amendment of March 21, 1901, to the charter, restricting the beneficiaries of policyholders to the family, heirs, blood relatives, affianced husband or wife, or persons dependent upon said policyholder, was binding upon Milly Cook to the extent of modifying her contracts entered into prior to said amendment.

The original charter of the Grand Fountain, in force when each of these two certificates was issued, purports to be the charter of a joint stock company. The first certificate or policy (as it is designated in the body thereof), dated May 5, 1886, certifies that the holder is "subject to the rules and regulations . . . which are contained in the constitution, the application and investigation blanks, which are the basis of this contract as if they were present in this certificate." The Grand Fountain then promised to pay to her heirs, or assigns, or person named in the certificate \$125, at the time of death of the certificate holder, provided only that the said certificate holder was a member in good standing at the time of death. This certificate contained no reservation of power to change or modify its provisions.

In the second certificate issued June 5, 1897, it is stated "that the application signed by the applicant and this certificate, taken together, shall constitute the contract between the member above named and the Grand Fountain." This contract was conditioned upon the payment by Millia Cook of annual or quarterly dues, in consideration of which the Grand Fountain promised to pay to her heirs, or assigns, the sum of \$500. This certificate is also without any reservation of power to change or modify its provisions.

It is conceded that Milly Cook was a member in good standing at the time of her death.

Inasmuch as Milly Cook undoubtedly had the right at the time these certificates or policies were issued to her and down to the time of the above amendment to the charter of the Grand Fountain in 1901, to name anyone she chose as a beneficiary under such certificates or policies, it becomes necessary to carefully examine this amended charter to see whether it was intended to have a retrospective effect. Statutes will be given a prospective operation only, unless the language used clearly indicates that they were intended to be retrospective in their operation, especially in a case where to give them a retrospective effect would be to impair the obligation of a contract. Prior to the enactment of the above act of March 3, 1898, there was no law in Virginia specifically authorizing beneficial associations, and it was probably for this reason that the Grand Fountain was incorporated as a joint stock company. This act contains no language indicating that it was intended to be retrospective in its operation, and the reorganization of the Grand Fountain was effected as set forth in its amended charter "under the provision of the general laws of the land, being specially authorized and provided for in the acts of the regular session of 1897-98, of the General Assembly of the State of Virginia," which was the above act. There was a decided departure in the new charter from the scope and purpose of the old, both as regards the objects of the Grand Fountain and the gov-

ernment and control thereof. In the new charter there was a specific reservation of power "to make its own constitution, by-laws, rules, and regulations, as well as the general laws for the government of all its branches, and to alter and amend the same." In this amended charter the right is specially reserved "to alter and amend" the constitution and by-laws of the Grand Fountain. The fact that the original charter contained no such reservation, and that neither of the certificates or policies issued to Milly Cook contained such a reservation, that there was such a departure from the original scope and purpose of the Grand Fountain, and that no effort was made to take up outstanding certificates and issue new ones in their stead, all indicate that it was not the intention, when this reorganization was made, that it would be retrospective in its effect, but that it was intended that the new Grand Fountain would take over the business of the old under the terms and conditions named in the contracts by the old company.

The case of *Voight v. Kersten*, 164 Ill., 314, is almost precisely like the instant case. That was a bill of interpleader filed by the High Court of the Independent Order of Foresters of the State of Illinois to determine who was entitled to the fund due on a certificate issued by the order to one Fisher. This certificate was dated January 14, 1893, and in it the order promised to pay Voight \$1,000 on the death of Fisher. Fisher died on October 30, 1894, in good standing. The order was organized under the statute in force July 1, 1887, which provided "that corporations, associations, or societies for the purpose of furnishing life insurance or pecuniary benefits upon the death of a member to the widows, heirs, relatives, legal representatives, or the designated beneficiaries of such deceased member," might be organized. At the time the certificate was issued one of the by-laws of the order provided that, "on the death of a member of this order in good standing the endowment shall be paid, first, to such person or persons as he may designate in his last will and testament or endowment certificate; second, to his widow; third, to his orphans; fourth, to his heirs." On June 22, 1893, another statute applicable to such orders went into effect, whereby "payments of death benefits shall only be made to the families, heirs, blood relatives, affianced husband, or affianced wife of or to persons dependent upon the member, and such benefits shall not be willed or assigned or otherwise transferred to any other person."

In 1894, in accordance with the provisions of this latter statute, the order amended its by-laws, and adopted the words of the statute omitting only the words "affianced husband." On October 19, 1894, Fisher requested the order to change the beneficiary from Voight to Mrs. Kersten, who was not a member of Fisher's family, blood relative, affianced wife, or dependent upon said Fisher during his lifetime, as provided in the amended statute and by-laws, which change the order refused to make. Fisher died on the 30th of October, leaving a will in which he designated Mrs. Kersten as the beneficiary of his certificate. The superior court awarded the fund to Voight, and on appeal to the appellate court the decree was reversed.

The Supreme Court, in sustaining the decision of the appellate court, quoted its opinion from which we take the following:

"At the time the contract was made between the deceased and the complainant order, the right to appoint the beneficiary or change the name existed, and, we think, was an important part of the contract entered into. It would seem that the construction of the act passed in June, 1893, giving it the effect to destroy that right of appointing a beneficiary or naming another beneficiary which existed in favor of the deceased under his contract prior to the passage of the act, would be to give the act a retrospective effect and destroy the obligation of the contract entered into between the deceased and the complainant. It is a recognized rule in the construction of statutes that they should be so construed as to give them a prospective operation only, and they should be allowed to operate retrospectively only where the legislative intention to give them such operation is clear and undoubted."

"We think that the right to make this change was one of the considerations entering into the contract at the time the deceased obtained his certificate from the complainant, and that it was a material right, and one that could not be taken away by the legislature, and we do not think that the legislature intended, by the act of June, 1893, to affect certificates of insurance issued prior thereto."

After quoting the opinion of the appellate court, the Supreme Court said: "We fully concur with the reasoning and conclusion of the appellate court in this case, and the judgment of the appellate court is affirmed."

We are in accord with the ruling in this case, and think the right of Milly Cook to name without limitation the person or persons who should be benefited under her contracts with the Grand Fountain, was a material right, possibly, the very consideration that moved her to enter into these contracts, and a right which without her consent could not be taken away. In the case of *Morton v. Supreme Council*, 100 Mo., 76, the certificate bound the member insured to comply with all laws and usages of the Council then in force or which might thereafter be adopted. At the time the certificate was issued one of the by-laws provided that, if a member committed suicide within two years after the policy was issued to him, the Council would be liable for one-half of the policy. Subsequently this by-law was amended so as to provide that, if any member committed suicide his beneficiaries would receive only one-half of the face value of the policy. The member committed suicide more than two years after the policy was issued to him, and it was held that the Council was liable for the full amount of the policy. In its opinion, the court said: "Certificates in fraternal associations for indemnity in the event of death are contracts for insurance, subject to all the rules of law which control the interpretation of contracts generally, create and enforce their obligations, and prohibit their impairment or subsequent alteration without the consent of both of the contracting parties."

The case of *Knights Templars, etc., Co. v.*



Jarman, 104 Fed., 638, is in line with the above State decisions. One of the questions in that case was whether the amendments to the constitution of the company, adopted after the policy was issued, and which limited to some extent the liability of the company, were binding upon the policyholder. The Circuit Court of Appeals for the eighth circuit, through Thayer, circuit judge, said: "We have next to determine whether the amendments to the defendant's constitution of date January 8, 1889, February 20, 1894, and January 14, 1896, whereby it expunged those provisions of its constitution which obligated it, on the death of a member, to refund 'all money paid on the policy in assessments,' have the effect of depriving the plaintiff of the right to recover the assessments paid on the policy in controversy, and of limiting her right of recovery to the principal sum therein mentioned. The argument in favor of giving the amendment such effect as is last described is based *wholly* on the concluding paragraph of Jarman's application for the policy, which is as follows: 'I further agree, if accepted, to abide by the constitution, rules, and regulations of the company as they now are, or may be constitutionally changed hereafter'. Conceding, in accordance with the stipulation of the parties, that the amendments in question were adopted legally in the manner prescribed by the defendant's constitution and by-laws, we observe in the first instance that there is nothing to indicate that the amendments were intended to have a retrospective operation, and reduce the amount payable on certificates or policies like the one at bar, which was then outstanding, and, in plain language, obligated the company to refund all assessments that might be paid thereon. The present record contains no evidence which shows affirmatively that the amendments were intended to operate retrospectively and extinguish the obligation to refund assessments that had been expressly assumed, while the fact that outstanding policies were not recalled, and the promise to refund assessments expunged or erased from the face of such policies, fairly indicates, we think, that the amendments were designed to operate prospectively on policies thereafter executed. . . . He (the policyholder) was to occupy a dual relation to the company. First, as one of its members; and, second, as any other individual having a contract with it. In the former relation he was willing to be bound by any lawful amendment to the company's constitution and by-laws that the members collectively saw fit to adopt, which concerned the government of the corporation or the mode of transacting its business, and did not impair any of the essential provisions of his contract. He probably foresaw that in the course of time the company might find it expedient to make some changes in the methods of corporate government, or in the mode of transacting its business, or in its rules of discipline; and he doubtless intended to assent to all amendments of the constitution and by-laws which were framed for that purpose, and would not deprive him of any substantial right or benefit secured by his policy. . . . And, even if it did appear that

he voted for the amendments and was aware of their adoption, the presumption would be that he did so in the belief that the amendments operated prospectively, and not retrospectively upon antecedent contracts". See, also, *Smith v. Pinch*, 80 Mich., 332; *Bragaw v. Supreme Lodge*, 128 N. O., 354.

"Claims for money due by virtue of an agreement are unlike mere matters of discipline, questions of doctrine, or of policy, and are not governed by the same rules. . . . One, who asserts a claim to money due on a contract, occupies an essentially different position from one who presents a question of discipline, of policy, or of doctrine of the order or fraternity to which he belongs." *Bauer v. Sampson Lodge*, 102 Ind., 212.

In the cases relied on by appellee either express authority was reserved to change the constitution and by-laws existing when the certificates were issued, or the member subsequently performed some act clearly indicating his acquiescence in the amendments. The case of *Grand Lodge v. McKinstry*, 67 Mo. Ap., 82, illustrates this point. After the certificate was issued in that case, the constitution of the lodge was amended to conform to a statute subsequently enacted which restricted the power of designation to classes of persons other than those mentioned in the certificate. The policyholder, however, "surrendered his old certificate and received a new one," clearly indicating a waiver on his part of any rights he might have had under the original certificate.

But, it is said that Milly Cook assented to and acquiesced in the amendment to the charter of the Grand Fountain restricting her right to appoint beneficiaries under her contracts. We do not think she did. The only allusion in the record upon which such a claim can be founded is the preamble to the resolutions authorizing the "Grand Worthy Master" and the "Grand Worthy Secretary" of the Grand Fountain to make application to the Circuit Court of the city of Richmond, to have its charter altered and amended. That preamble, as above stated, says "the members (or stockholders)" of the Grand Fountain were all present in person or by proxy. There is nothing in the record to indicate that Milly Cook was either a stockholder or a member of the Grand Fountain. Assuming that Levy Fountain, a subordinate fountain, was entitled to a delegate and was so represented when these resolutions were adopted, we can not assume, in the absence of direct proof, that the delegate was authorized to consent to the impairment of the contracts of the old fountain. Inasmuch as there was no reservation of power to modify or change these contracts, either in the original charter or in the contracts themselves, and inasmuch as the Grand Fountain after its charter was amended appears to have made no attempt to take up these certificates or contracts and issue new ones in conformity with the amended charter, we can not assume that because the policyholder continued payments under such contracts she thereby intended to assent to a material modification thereof. On the contrary, the natural inference to be adduced from the facts, is that she expected to be bound by the new constitution as far as it provided for the government and discipline of the Grand Foun-

tain and the subordinate fountain to which she belonged, but that her contract rights would be preserved and protected.

The decree is reversed with costs, and the cause remanded for a decree in conformity with this opinion.

Reversed.

**THE ALLEMANNIA FIRE INSURANCE COMPANY, OF PITTSBURG, STATE OF PENNSYLVANIA, APPELLANT,**

v.

**THE FIREMEN'S INSURANCE COMPANY OF BALTIMORE, TO THE USE OF FRANCIS E. S. WOLFE, RECEIVER.**

**INSURANCE; CONTRACT OF REINSURANCE; INSOLVENCY OF REINSURED COMPANY.**

1. From the nature of the contract of reinsurance, the insolvency of the original insurer in no wise affects or limits responsibility under it.
2. A contract of reinsurance provided that losses "shall be payable pro rata with, in the same manner, and upon the same terms and conditions as paid by the said reinsured company under its contracts hereunder reinsured, and in no event shall this company be liable for an amount in excess of a ratable proportion of the sum actually paid to the assured by the said reinsured company under its original contracts hereunder reinsured," etc. The reinsured company was rendered insolvent by its losses caused by the great Baltimore fire of 1904, and the reinsuring company contested its liability on the ground that actual payment by the reinsured of its losses in whole or in part was a condition precedent to its right to recover upon the contract of reinsurance. Held, that the insolvency of the reinsured company did not relieve the reinsuring company from liability under its contract, and a judgment in favor of the reinsured company affirmed.

No. 1004. Decided November 17, 1906.

**APPEAL** by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 47,490, in an action upon a contract of reinsurance. Affirmed.

*Mr. Andrew Y. Bradley* and *Mr. C. H. Bradley* for the appellant.

*Mr. Wm. F. Mattingly* for the appellee.

*Mr. Justice McCOMAS* delivered the opinion of the Court:

In the court below the Firemen's Insurance Company of Baltimore, Md., to the use of Francis E. S. Wolfe, receiver, the appellee, sued the Allemannia Fire Insurance Company of Pittsburg, Pa., the appellant, upon the appellant's contract of reinsurance of property insured by the appellee, which property was consumed by the great fire in Baltimore in February, 1904.

The declaration states that the amount of losses on the property reinsured was \$56,312.56, and that the appellant was liable to pay to the appellee \$22,613.24 under its contract of reinsurance. The appellant demurred to the declaration. The demurrer was overruled, and upon the trial, the appellee recovered a verdict of \$12,613.24. The disastrous Baltimore fire had rendered the appellee insolvent and the receiver instituted this action. At that time, the appellee had paid nothing, but prior to the trial it had paid 55 per cent of its losses under the original contracts reinsured by the appellant.

The appellant raised but one question, by the demurrer overruled, and later by the instructions which were asked at the trial and refused.

The appellant demurred to the declaration on the ground that under the eleventh stipulation of the contract of reinsurance, the appellant was only liable for its pro rata share of the amount actually paid by the appellee to the insured, and because the declaration averred that the plaintiff below by reason of its heavy losses caused by the great conflagration in Baltimore in February, 1904, had become insolvent and had been placed in the hands of a receiver and was and will be unable to pay its losses unless it can collect the amount due by the defendant below and by other fire insurance companies with which it had contracts of reinsurance, and since it did not appear from the declaration that the plaintiff below had paid anything, it was not entitled to recover anything upon its contract of reinsurance by the defendant below.

The only question upon this appeal is the construction of the contract of reinsurance and especially the construction of the eleventh stipulation of that contract which is as follows: "Each entry under this compact, unless otherwise provided in this compact, shall be subject to the same conditions, stipulations, risks, and valuation as may be assumed by the said reinsured company under its original contract hereunder reinsured, and losses, if any, shall be payable pro rata with, in the same manner, and upon the same terms and conditions as paid by the said reinsured company under its contracts hereunder reinsured, and in no event shall this company be liable for an amount in excess of a ratable proportion of the sum actually paid to the assured or reinsured by the said reinsured company under its original contracts hereunder reinsured after deducting therefrom any and all liability of other reinsurers of said contracts or any part thereof."

We must determine upon the demurrer whether the appellee having become insolvent, such insolvency, under the provisions of the eleventh stipulation, relieved the appellant from all liability under its contract of reinsurance.

The appellant insisted that by the terms of the stipulation just quoted actual payment by the appellee of its losses in whole or part was a condition precedent to its right of recovery from the appellant. It was conceded that by the weight of authority payment by the reinsured of its losses is not a condition precedent to its right of recovery against the reinsurer and also that the insolvency of the reinsured does not relieve the reinsurer from its liability. It was urged, however, that in none of the cases supporting the propositions conceded did any of the contracts sued upon contain the additional provision which is here found, namely, "and in no event shall this company be liable for an amount in excess of a ratable proportion of the sum actually paid, etc.," and this appears to be true.

The contract of reinsurance was early adopted by the maritime nations of continental Europe. Chief Justice Kent remarked that very little information upon this question can be found in the English books, as reassurances are rendered unlawful in most cases by the statute of 19 Geo.

II, c. 37, and that by the law of the commercial nations of the continent the reinsurer was obliged to pay all that the first insurer ought himself to pay. "The reinsurer has no connection or concern with the first insurance, and is at all times bound to indemnify his own insured when the other can show that he has been damaged in consequence of the first insurance," and Livingston, J., added, "this engagement is to make good all that the first underwriter shall lose or become liable to pay." *Haastie v. De Peyster*, 3 Caines Rep., 194, 195.

In a later case it was said, in speaking of the reinsured, "their claim upon the reassurers rests upon their liability to pay the loss to the assured, not on their greater or less ability to pay it in full. If the liability of the reassurer depends upon the insolvency or bankruptcy of the first insurer, in many cases he will not become chargeable at all, or but to a nominal amount, according to the extent of the first insurer's insolvency." *Hone v. Ins. Co.*, 1 Sandford, 152. Affirmed by the Court of Appeals in 2 N. Y., 236; N. Y. S. M. Ins. Co. v. Protection Ins. Co., 1 Story's Rep., 461.

The courts treat reinsurance as a contract of indemnity to the reinsured, wherefore it is not necessary for the reinsured to pay the loss to the first insured before proceeding against the reinsurer, nor is the liability of the latter affected by its inability to fulfil its own contract with the original insured. The liability of the reinsurer unless specially limited by agreement is coextensive with that of the reinsured. In seeking the intent of the parties to the contract and construing its terms, the courts are always mindful that the policy is a contract of indemnity. In the case of a policy containing the following clause: "Loss, if any, payable pro rata and at the same time with the reinsured," it was held that by the first part of this clause, the defendant was not bound to pay the full amount reinsured by its policy, but only such a proportionate amount of the loss as is in the ratio of the amount of the reinsurance to the amount originally insured. In regard to the latter part of this clause which says the loss is payable "at the same time with the reinsured," it is not meant that actual payment by the reinsured is in fact to precede or to accompany payment by the reinsurer. "It looks to the time of payability and not to the fact of payment." See *Blackstone v. Allemannia Fire Ins. Co.*, 56 N. Y., 107. In another case the contract stipulated that: "The losses, if any, are to be payable pro rata to the Enterprise Insurance Company at such time and in such manner as the latter company may pay," and Judge Sharwood said a contract of reinsurance is a contract of indemnity and this clause must have such an interpretation as will not entirely defeat the contract. The Enterprise Company, being insolvent, had made a general assignment, and this learned judge remarked: "If the assignee can only recover from the defendant when and as he pays dividends on the assigned estate to the original insured, it is plain an endless number of suits must be the consequence; and if it had so happened that there was no assigned estate, there could be no recovery at all. I would construe the words 'as the latter company may pay' to mean 'as the latter

company may be liable to pay.'" Affirmed. *Fame Ins. Co.'s Appeal*, 83 Pa., 396.

In *Ex parte Norwood*, 3 Bissell, 512, 18 Fed. Cas., 457, where the liability clause in the reinsurance contract was, "loss, if any, payable at the same time and pro rata with the insured," Blodgett, J., considered that the true meaning of the clause and a salutary one, is that the reinsuring company stipulates that it shall not pay any more loss than the original company is liable for; that the reinsuring company is to have the benefit of deductions by reason of other insurance or salvage, which the original insurance company would have, and also the benefit of any time or delay for examination which the first company might claim; that it is not to pay any faster than the original company, and is to have the benefit of any defense the original company would have had. So that the liability of the reinsuring company shall be coextensive only with the liability, and not with the ability to pay, of the original company. Judge Blodgett said: "It is to my mind absurd to say if a loss occurs, on one of those reinsured policies, that the company primarily liable is to have its claim against the reinsuring company limited by its ability to meet its obligations to its original holders. The very object of making the policy of reinsurance, was to place the company in funds with which to make its policy-holders whole, and that is defeated if the construction which is insisted upon by the assignee in this case is the true one."

In *Cashan v. Northwestern Ins. Co.*, 5 Biss., 476, 5 Fed. Cas., 271, the court took the same view of a similar clause saying that under such a contract of indemnity the insolvency of the original insurer is no defense to a suit against the reinsurer, for the court said: "Otherwise, the defendant's policy would not be the contract of indemnity intended and endless litigation might ensue."

The parties to this contract are in different States. The place where the final act is performed which is necessary to establish the relation of reinsurer and reinsured becomes therefore the locus of the contract. Its terms make plain that the locus of the contract we are here considering was Maryland. In that State it is true the statute of 19 Geo. II, c. 37, is still in force as to reinsurance on marine risks, but the Court of Appeals construes in a fair and liberal spirit the contract of reinsurance against fire. In *Ins. Co. v. Cashow*, 41 Md., 74, etc., that court said that from the nature of the contract of reinsurance, the insolvency of the original insurer in no wise affects or limits responsibility under it, and in construing a clause almost identical in terms with the clause in the New York case last herein mentioned, adopts the reasoning of the New York Court of Appeals and adds: "When we consider the distinct and independent nature of this contract and that it is wholly unaffected by the insolvency of the original insurer, there is, we think, no escape from the force of that reasoning."

Mindful of the construction uniformly given, as we have shown, to such contracts of reinsurance and of the construction which the Maryland court has given to a contract of indemnity such as we are here considering, we can not interpret this Maryland contract to mean that the

reinsurance of its policies by the appellee, which, by the import of the contract of reinsurance itself, was designed by the original insurer to protect its policy-holders from its own inability to pay, was intended to defeat both if it happened to become insolvent.

In our opinion the additional clause in the eleventh stipulation of the contract of reinsurance before us was not intended to mean that the insolvency of the first insurer should release the reinsurer. The word "paid" in the clause "losses, if any, shall be payable pro rata with, in the same manner, and upon the same terms and conditions as paid by the said reinsured company" means "payable" or "liability to pay." The concluding words, "and in no event shall this company be liable for an amount in excess of a ratable proportion of the sum actually paid to the assured or reinsured by the said reinsured company under its original contracts hereunder reinsured after deducting therefrom any and all liability of other reinsurers of said contracts, or any part thereof," does not vary the meaning so as to operate to release from liability the reinsuring company because the first insurer became insolvent. The added words were not intended to change and do not change the import of this contract of indemnity. They mean that the liability of the reinsurer is to be coextensive with the liability of the reinsured company and are intended to protect the reinsuring company from paying more than the "sum actually payable" by the reinsured company. The words "sum actually paid" in this collocation providing for deducting therefrom "all liability of other reinsurers" must mean that in no event shall the reinsuring company pay more than a ratable proportion of the sum "actually payable" by the reinsured company, or, in other words, more than its ratable proportion of the actual liability to pay "on the part of the reinsured after deducting all liability of other reinsurers." The construction urged so earnestly by the counsel for the appellant would defeat this contract of indemnity. The construction we give to this stipulation as to the liability of the appellant gives effect to the contract and is the only interpretation which preserves the vitality of the contract of reinsurance. It is the nature of the contract of reinsurance that the insolvency of the original insurer can in no wise affect or limit responsibility under it.

The judgment of the learned court below must be affirmed with costs, and it is so ordered. Affirmed.

**Election of Remedies—Consistency of Remedies.**—The recovery of an unsatisfied judgment on notes given for the price of personality is no bar to a subsequent action for damages for the fraud by which the property was obtained. *Standard Sewing Mach. Co. v. Owens*, (N. Car.), 53 S. E. Rep., 345.

**Bankruptcy.**—A judgment for assault and battery, false imprisonment, and malicious prosecution is held, in *McChrystal v. Olinabee* (Mass.), 3 L. R. A. (N. S.), 702, not to be affected by a discharge in bankruptcy, although defendant was not actuated by a wicked or malevolent desire to injure the plaintiff.

## Court of Appeals of the District of Columbia.

UNITED STATES OF AMERICA, APPELLANT,

v.  
CHARLES R. EVANS AND HARRY J. O'DONNELL.

### CRIMINAL PROCEDURE; INDICTMENT FOR MURDER.

Whether an indictment charging murder in the first degree committed while engaged in the perpetration of another offense should not charge that the unlawful killing was "purposely" done, *quære*; but it not being necessary to decide the point in this case, another indictment against the same defendants charging the killing to have been purposely committed having been upheld, the appeal of the United States dismissed.

No. 1702. Decided November 7, 1906.

APPEAL by United States from an order of the Supreme Court of the District of Columbia, holding a Criminal Court, sustaining a demurrer to an indictment for murder. Dismissed.

Mr. D. W. Baker for the United States.

Mr. Thos. C. Taylor for the appellees.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This case involves the sufficiency of an indictment of the same parties, and for the same offense, as in appeal No. 1703, just decided (*U. S. v. Evans et al.*, ante).

The only difference between the two indictments is that in this the word "purposely" is omitted in charging the unlawful killing. Section 798 of the Code declares one guilty of murder in the first degree, who, being of sound memory and discretion, "purposely, and, either of deliberate and premeditated malice, or by means of poison, or in perpetrating or attempting to perpetrate any offense punishable by imprisonment in the penitentiary, kills another."

The appellants have cited a number of cases to show that under similar statutes in other jurisdictions the word "purposely" is not necessary in an indictment for murder where the homicide occurred in attempting to commit another felony. It is sufficient for present purposes to say that the statutes on which these cases depend differ somewhat from section 798 of the Code. The Nebraska statute, for example, uses the following language: "Purposely and of deliberate and premeditated malice, or in the perpetration" (of certain named offenses). Section 798, on the other hand, changes the form by inserting the word *either* in the clause following "purposely," as appears above.

It seems that, at common law, a homicide occurring, accidentally, in attempt to perpetrate robbery or other felony, constituted murder. *Com. v. Chance*, 174 Mass., 245, and authorities cited, p. 253.

It may be, therefore, that the framers of section 798 changed the language as above mentioned so as to make the word "purposely" apply specially to homicide committed in perpetrating or attempting to perpetrate another offense punishable by imprisonment in the penitentiary, thereby changing the rule of the common law.

As the indictment in the other case, in which the homicide is charged as having been purposely committed, has been upheld and the ap-

pelles may be tried thereon, the point is of no practical importance and presents but a moot question that we do not feel called upon to decide until it shall become necessary, and shall have been fully argued. It is a safe rule in criminal pleading to follow the language of the statute where there is any uncertainty in respect of its meaning.

Because the question involved is no longer of any practical importance, the appeal will be dismissed.

Dismissed.

**Master and Servant—Where Party Employed for a Year if Competent, the Burden of Proof is on the Employer to Show Incompetency.**

In a recent opinion by the Supreme Court of Tennessee in the case of *Mobile, J. & K. O. R. Co. v. Hayden*, 94 S. W. Rep., 940, the plaintiff was employed by a railroad company under a contract alleged by the company to be dependent upon the contingency that he should prove capable, efficient, and satisfactory, and the defendant claimed that plaintiff was discharged because of incompetency. The court instructed the jury that if the above was a part of the contract, the burden of proof was upon the defendant. One of the contentions was upon this point, counsel for defendant citing the case of *Allen v. Mutual Compress Co.*, 14 So. Rep., 362, an Alabama case decided in 1893. In that case the opinion states that "the defendants employed the plaintiff for a period of five months at two dollars per day to sew and tie cotton bales for the compress. After serving a little more than one month the defendant paid the plaintiff for the time of the service rendered and discharged him, claiming that under the contract he (it) had the right to discharge the defendant (plaintiff) whenever it became dissatisfied with the services of the defendant (plaintiff), and that it was the sole judge of the sufficiency of the cause. The contract in that case provided as follows: 'We guarantee to give satisfaction in sewing and tying, or any other work that we may be required to do.' The defense to the complaint was that plaintiff failed to give satisfaction. The court said: 'The authorities are not altogether harmonious. In some it is held that a stipulation of similar import of a contract arms the party for whose benefit it is made, with unquestioned authority to consult only his own judgment, will, or feelings and the reasonableness of the grounds of dissatisfaction is not a matter of inquiry. *Oline v. Libby* (Wis.), 49 N. W. Rep., 832, 32 Am. Rep., 700; *Gibson v. Oranage* (Mich.), 33 Am. Rep., 351, and authorities cited in note; *McCarren v. McNulty*, 7 Gray (Mass.), 139; *Tyler v. Ames*, 6 Lans. (N. Y.), 280. On the other hand there are authorities which hold that an employer can not dismiss his servant without actual cause. *Jones v. Transportation Co.* (Mich.), 16 N. W. Rep., 893; *Daggett v. Johnson*, 49 Vt., 345.' The court held as follows: 'When, therefore, one guarantees to give satisfaction, he assumes the undertaking to perform the work in such manner as to satisfy the other, and invests the latter with full power to determine the reasonableness of the cause.' Mr. Page, in his work on Contracts (vol. 3, sec. 1390), in dealing with this subject, said: 'So a contract for personal services as long as they are satis-

factory to the employer, may be terminated by him at any time when he is dissatisfied in good faith, and the justice of such dissatisfaction can not be inquired into. Thus, in case of actual dissatisfaction, whether justified or not, an employer may terminate a contract of employment as chef, furrier, or manager of a business,' citing *Daniels v. Decatur County*, 99 Iowa, 440, 68 N. W. Rep., 718; *Sax v. Railroad Co.*, 125 Mich., 252, 84 N. W. Rep., 314, 84 Am. St. Rep., 572; *Koehler v. Buhl*, 94 Mich., 496, 54 N. W. Rep., 157; *Frery v. Rubber Co.*, 52 Minn., 264, 53 N. W. Rep., 1156, 18 L. R. A., 644. *Rossiter v. Cooper*, 23 Vt., 522; *Evans v. Bennett*, 7 Wis., 404.

"These authorities doubtless state the correct rule on this subject, but we do not think they are controlling in the present instance, since, according to the testimony of Mr. Stratton, the president of the railroad company, the duration of the plaintiff's employment was dependent upon the contingency that he should prove capable, efficient, and satisfactory. It will be remembered that the president assigns as a reason for the discharge of the plaintiff his incompetency and dereliction of duty in handling the business of the company. In any view of the case, the burden of proof devolves on the defendant company to show that plaintiff's services were unsatisfactory. This was an affirmative defense, and it devolved on the company to prove it. The plaintiff was not onerated with the duty of proving in the first instance that his services were satisfactory to the defendant, although we think his testimony establishes that fact. Conceding that by the terms of a contract the greatest latitude and discretion was reserved to the company in continuing the contract, and that it might be annulled at any time, when in the judgment of its executive officers the services of the plaintiff were unsatisfactory, nevertheless the burden of proof to show that these services were unsatisfactory devolved in the first instance upon the company." *Elliott on Evidence*, vol. 1, sec. 132.

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### RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

**Legal Notices.****FIRST INSERTION.**

**John Paul Earnest, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters of administration on the estate of Julia Fisher Campbell, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 24th day of December, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 27th day of November, 1906. JOSEPH A. McKELLIP, by John Paul Earnest, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,— Admn. [Seal.] 48-3t

**Joseph H. Stewart, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Henrietta Baker, Deceased.**  
**No. 13,987. Administration Docket.—**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Mary Williams, it is ordered, this 28th day of November, A. D. 1906, that Cora Baker, Beulah Baker, Henry Baker, and James Baker, and all others concerned, appear in said court on Monday, the 31st day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Record once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 48-3t

**James T. Hunter, Attorney**  
**Supreme Court of the District of Columbia.**  
**Holding Probate Court.**  
**Estate of Simeon T. Neal.**

**No. 13,971. Administration Docket.—**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Permelia L. Dodd, it is ordered, this 28th day of November, A. D. 1906, that Robena U. Neal, and all others concerned, appear in said court on Monday, the 31st day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 48-3t

**John B. Larner, Charles S. Hayden, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Jennie De Witt Talmage, Deceased.**  
**No. 14,015. Administration Docket.—**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Ernest H. Pillsbury, the executor named therein, said will bearing date December 24, 1902, it is ordered, this 27th day of November, A. D. 1906, that Jessie Talmage Smith, May Mangam, Edith Donnan, Maude Talmage Wyckoff, and Frank De Witt Talmage, all of full age, and all others concerned, appear in said court on Monday, the 31st day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter, Washington Herald, and Washington Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 48-3t

**Legal Notices.**

**Alex. G. Bentley, Attorney.**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Armilda McGrew, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the 23d day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of November, 1906. EDWARD A. BALLOCH, 1013 15th st., N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,042. Administration. [Seal.] 48-3t

**Douglas & Douglas, Wm. B. Matthews, Jr., Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Ellen Zora Bosworth, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of November, 1906. MARY M. ANTIONETTE SEAW, 3216 Prospect ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,027. Admn. [Seal.] 48-3t

**Wilton J. Lambert, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Rocco Brignole, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of November, 1906. LOUISE BRIGNOLE, 1415 You st., N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,665. Administration. [Seal.] 48-3t

**R. H. McNeill, Solicitor**

**In the Supreme Court of the District of Columbia.**  
**Mary E. Smith, Plaintiff, v. William Henry Smith and**  
**Adele Blackwell, Defendants.**  
**Equity, No. 26,801.**

The object of this suit is to obtain an absolute divorce from the defendant, William Henry Smith, because of his adultery with defendant Adele Blackwell. On motion of the plaintiff it is, this 20th day of November, 1906, ordered that the defendant, Adele Blackwell, cause her appearance to be entered herein, on or before the fortieth (40) day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order shall be published once a week for three successive weeks in The Washington Law Reporter and The Washington Times, before said date. ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by R. F. Belew. 48-3t

**Robert S. Hume, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Walton Goodwin, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of August, 1906. BETTIE WALKER GOODWIN, 1516 P St. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,823. Administration. [Seal.] 48-3t

**Legal Notices****Malcolm Hufty, Solicitor**

In the Supreme Court of the District of Columbia.  
Francis E. Smith, Complainant, v. Louis H. Meyers  
et al., Defendants. Equity, No. 28,380.

The object of this suit is to establish a mechanic's lien and for sale of the property described in these proceedings. On motion of the complainant, by Malcolm Hufty, his solicitor, it is, this 27th day of November, 1906, ordered that the defendant, Fount Le Roy Elevator Company, a corporation, cause its appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter

[Seal] and The Washington Herald before said day.  
HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 48-St

**Barnard & Johnson, Attorneys**  
Supreme Court of the District of Columbia.  
Holding Probate Court.

Estate of Joannes Rochoon, Deceased.  
No. 13,998. Administration Docket, 35.

Application having been made herein for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by Marie Wagner Rochoon, it is ordered, this 28th day of November, A. D. 1906, that Blanche Rochoon and Marie Rochoon, and all others concerned, appear in said court on Wednesday, the 26th day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication

[Seal] to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 48-St

**Barnard & Johnson, Solicitors for Complainant**  
T. Percy Myers and Gittings & Chamberlin, Solicitors  
for Defendants

In the Supreme Court of the District of Columbia.  
Ernest L. Schmidt, Complainant, v. Ada G. Earhart  
Ross et al., Defendants. In Equity, No. 25,522.

**ORDER NISI.**

Ralph P. Barnard, Justin Morrill Chamberlin, and T. Percy Myers, trustees herein, having reported the sale of the following lots in Ferdinand Butler's subdivision of lots in square 228 as per plat recorded in book R. L. H., at folio 146, one of the records of the surveyor's office of the District of Columbia, to wit: Lots 17 and 18 to Edwin H. Neumeier and Randolph T. Warwick for the sum of \$9.50 per square foot, there being according to said plat 2,100 square feet contained in said property, making the total purchase price \$19,950; lot 20 to Washington Nallor for the sum of \$6.00 per square foot, there being according to said plat 1,300 square feet contained in said property, making the total purchase price \$7,800; and lot 21 to Andrew B. Graham for the sum of \$6.30 per square foot, there being according to said plat 1,806 square feet contained in said property, making the total purchase price \$11,371.50, it is, this 28th day of November A. D. 1906, by the court, ordered, that the said sales be finally ratified and confirmed, unless good cause to the contrary be shown on or before the 29th day of December A. D. 1906. Provided that a copy of this order be published in The Washington Herald and The Washington Law Reporter once a week for three successive

[Seal] weeks before the aforesaid day. ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by R. P. Belew. 48-St

**Stockholders' Meeting (Annual).**  
OFFICE OF PUEBLO MINING COMPANY,  
Rooms 710-711 Colorado Building,  
WASHINGTON, D. C., November 27, 1906.

**To the Stockholders of the Pueblo Mining Company:**

Please take notice that the annual meeting of the stockholders of the Pueblo Mining Company will be held at the principal office of the company, in the city of Washington, D. C., on Tuesday, the 8th day of January, 1907, at 12 o'clock noon, for the purpose of electing nine trustees, and for the transaction of such other business as may properly come before the meeting. The stock transfer books of the company will be closed on Saturday, the 29th day of December, 1906, at 3 o'clock P. M., and will remain closed until Wednesday, the 9th day of January, 1907, at 10 o'clock A. M.

[Seal] JNO. T. MCCOY,  
48-St Secretary.

**Legal Notices.****Julius I. Peyser, Attorney**

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, who were by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Herman Baumgarten, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 24th day of December, 1906, at 10 o'clock A. M., as the time, and said court room as the place for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 28th day of November, 1906. ADA BAUMGARTEN, ARTHUR BAUMGARTEN, by Julius I. Peyser, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,977. Administration. [Seal.] 48-St

**Robinson White, Attorney**

In re Estate Charles White, Deceased.  
Administration Docket. No. 13,271.

**ORDER OF COURT.**

The above-entitled cause coming on to be heard on motion of counsel for the executors to ratify the sale of sublot numbered forty-six (46) in square numbered one hundred and seventeen (117) and sublot numbered seventeen (17) in square numbered three hundred and seven (307) in Washington, District of Columbia, as shown in report of such sale filed in this cause, and the motion considered and counsel heard, and the report of the sale as made by the said executors, being duly considered, it is this 28th day of November, 1906, ordered, adjudged, and decreed that the sale by the said executors of the said sublot numbered forty-six (46) in square numbered one hundred and seventeen (117) to James Kerr, and the sale of the said sublot numbered seventeen (17) in square numbered three hundred and seven (307) to Clifford A. Borden be ratified by the court, unless cause to the contrary be shown on or before the 26th day of December, 1906. Provided that a copy of this order be published in The Washington Law Reporter once a week for three successive weeks prior

[Seal] to the said 28th day of December, 1906.  
ASHLEY M. GOULD, Justice. A true copy.  
Attest: James Tanner, Register of Wills. 48-St

**J. Wilmer Latimer, Attorney**

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Vernon C. Tasker, Deceased.  
No. 14,018. Administration Docket.

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a. to be issued to Abner Y. Leech, Jr., on said estate by Evelyn Hanna, it is ordered this 28th day of November, A. D. 1906, that Hiram P. Tasker, and all others concerned, appear in said court on Monday, the 31st day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return

[Seal] day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 48-St

**SECOND INSERTION.****R. Preston Shealey, Attorney**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Hannah H. Hendrickson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of November, 1906. RICHARD HENDRICKSON, 921 1/2 La. ave. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,089. Admn. [Seal.] 47-St



**Legal Notices.****Coldren & Fenning, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Michael Murphy, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of November, 1906. FREDERICK A. FENNING, Century Bldg. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,040. Administration. [Seal.] 47-3t

**Geo. F. Collins, Solicitor  
In the Supreme Court of the District of Columbia.  
In Re Lawson Council, No. 297, Independent Order of  
St. Luke, a Corporation. Equity No. 26,700.**

Upon consideration of the petition of Lawson Council, No. 297, Independent Order of St. Luke, a corporation, asking for a dissolution of its corporate existence, it is this 20th day of November, A. D. 1906, ordered and adjudged that all persons interested in said corporation appear and show cause on or before the 24th day of November, A. D. 1906, if any they have, why said corporation should not be dissolved as prayed. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star before said day. [Seal] By the Court: ASHLEY M. GOULD, Chief Justice. True copy. Test: J. R. Young, Clerk, by R. P. Belew. 47-3t

**W. Gwynn Gardiner, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.  
Estate of Jane E. Kiekham, Deceased.  
No. 13,840. Administration Docket —.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by W. Gwynn Gardiner, it is ordered this 20th day of November, A. D. 1906, that Edward F. Cassell, and all others concerned, appear in said court on Monday, the 24th day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 47-3t

**Sidney T. Thomas, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Selma B. Sharretts, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of November, 1906. SIDNEY T. THOMAS, 452 D St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,994. Administration. [Seal.] 47-3t

**T. B. Warrick, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Ida Johnson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3rd day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of November, 1906. THOS. B. WARRICK, 411 6th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,943. Administration. [Seal.] 47-3t

**Legal Notices.**

[Filed November 14th, 1906. J. R. Young, Clerk.]

McKenney, Flannery & Hitz, Solicitors

In the Supreme Court of the District of Columbia,  
Holding an Equity Court.

Annie B. Strickland, Complainant, v. J. Bryant  
Tucker, Jr., et al, Defendants.  
In Equity, No. 26,621.

ORDER FOR APPEARANCE OF ABSENT DEFENDANTS.

The object of this suit is to make partition by sale among the heirs at law of Clara B. Walker, deceased, of the land and premises known as lot numbered one hundred and thirty (130) in square numbered four hundred and forty-five (445) in the city of Washington, the same being improved by a brick dwelling-house numbered 604 Q street, northwest, in said city. On motion of the complainant it is, this 14th day of November, 1906, ordered that the defendants, J. Bryant Tucker, junior, Arabella H. Tucker, Marina H. Hobbs, Nellie F. Munger, Marion C. Hunter, Norman F. Tucker, Sarah P. Pellett, Thomas A. Harwood, Mary A. Harwood, Sarah Harwood, Amos A. Bemis, Clara H. Bemis, Edith S. Lehy, Walter Bingham, Annie M. Shaw, Eugenia Wedger, Bertha E. Bingham, John Harwood Hudson, Eva C. Aiken, Lella A. Freer, W. G. DeA. Hudson, Charles Freeman Holman, Josephine A. Wale, Fanny R. Powers, William A. Burgess, Ella Rathburn, Thomas Arthur Hubbard, William P. McKown, Harry Harwood Haines, Charles M. Deland, Albert V. Deland, Evelina B. Deland, Charles Armit Deland, Carrie E. Tarbell, Etta E. Gay, Joseph H. Craig, Eleanor C. Drake, Norman S. Craig, Grace C. Stork, Annie S. Chapman, Grace Smith Gillis, William Dudley Smith, Catherine S. Smith, and Frederick Bingham, or the unknown heirs, devisees and alienees of said Frederick Bingham; and Thomas H. Bingham, or the unknown heirs, devisees, and alienees of said Thomas H. Bingham; and Edward Bingham, or the unknown heirs, devisees, and alienees of said Edward Bingham, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three (3) months from this date, otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three months in The Washington Law Reporter and The Washington Herald before said day. [Seal] HARRY M. CLAABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. nov 23 30, dec 21 28, jan 18 25

**R. Preston Shealey, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.**

Estate of John Connell, Deceased.

No. 13,998. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate by Mary E. Connell. It is ordered, this 16th day of November, A. D. 1906, that Mary Shaughnessy, of Ballabricken, County Limerick, Ireland, and all others concerned, appear in said court on Friday, the 28th day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 47-3t

**P. H. Marshall, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.**

Estate of Mary D. Bradford, Deceased.

No. 13,991. Administration Docket 35.

Application having been made herein for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by John C. Edwards and Albion K. Parris, it is ordered, this 16th day of November, A. D. 1906, that Katharyn V. Kennedy (minor) and Frank Kennedy (custodian of said minor), and all others concerned, appear in said court on Thursday, the 3rd day of January, A. D. 1907, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 47-3t

**Legal Notices.**

**Geo. Francis Williams, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Sarah A. Van Derlip, Deceased. No. 14,007.**  
**Administration Docket 88.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Burr N. Edwards, it is ordered, this 23d day of November, A. D. 1906, that Charles Arnold Phipps and Lucian Holbrook, and all others concerned, appear in said court on Wednesday, the 26th day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal]

day. **ASHLEY M. GOULD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 47-8t

**H. B. Moulton and J. H. Lichliter, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of George A. Bartlett, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscribers, on or before the 15th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 15th day of October, 1906. **HOSEA B. MOULTON**, Washington Loan and Trust Building; **JACOB H. LICHLITER**, 416 5th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,560. Administration. [Seal.] 47-8t

**W. C. Sullivan, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of George W. Bates, Deceased.**  
**No. 13,942. Administration Docket—**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Joseph Stewart, it is ordered this 22d day of November, A. D. 1906, that Mary Newlin, and all others concerned, appear in said court on Monday, the 31st day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal]

day. **ASHLEY M. GOULD, Justice.** Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 47-8t

**C. W. Darr, Solicitor**

**In the Supreme Court of the District of Columbia.**

**Mary Molloy v. Ellen O'Brien et al.**  
**Equity No. 28,188.**

Charles W. Darr, Richard A. Curtin, and John J. Brogan, trustees herein, having reported the sales of part of lot sixteen (16), in square 449, being improved by premises No. 13 and 616 Goat Alley northwest, to Joseph Levaso, for the sum of eight hundred and ten (\$810.00) dollars, lot number seventeen (17), in W. W. Corcoran's subdivision of square 509, improved by premises known as No. 425 "Q" st. northwest, to Clifford A. Borden for the sum of twenty-nine hundred (\$2,900.00) dollars, and the north one-half of lot numbered thirty-nine (39), in Wright and Cox's subdivision of Mount Pleasant and Pleasant Plains, being improved by premises known as No. 2222 Ninth street northwest, to John M. Mahaney, for the sum of nine hundred and seventy-five (\$975.00) dollars, it is by the court, this 16th day of November, A. D. 1906, ordered that said trustees be, and they are hereby, authorized to accept said offers, and, upon compliance with the terms of said sale, said sale shall stand confirmed, unless cause to the contrary be shown on or before the 26th day of December, A. D. 1906. Provided a copy of this order be published in The Washington Law Reporter and The Washington Herald once a week for three successive weeks before the last mentioned date. By the Court: **HARRY M. CLA-BAUGH**, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 47-8t

**Legal Notices.**

**John E. Laskey and Ralph Given, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**In re Estate of George Hicklenlooper, Deceased.**  
**No. 13,899.**

It appearing to the court that the citation issued herein to Lillie M. Davidson and Annie L. Hefner upon the petition of Frank A. Sebring and Harry L. Rust for the admission to probate of the last will and testament of said George Hicklenlooper, deceased, has been returned "not to be found," the said Lillie M. Davidson and Annie L. Hefner are hereby notified of the said application for such probate, and it is this 20th day of November, A. D. 1906, ordered that the said Lillie M. Davidson and Annie L. Hefner cause their appearance to be entered herein on or before the thirtieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the matter will be proceeded with as in case of default. Provided a copy of this notice be published once in each of three successive weeks in The Washington Law Reporter and The Washington Herald. [Seal]

day. **ASHLEY M. GOULD, Justice.** A true copy. Attest: James Tanner, Register of Wills. 47-8t

**Barnard & Johnson Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Abigail Vance Sprague, Deceased.**  
**No. 14,014. Administration Docket—**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Robert W. Taylor and J. Alexander Vance, it is ordered, this 22d day of November, A. D. 1906, that Frank W. Vance, and all others concerned, appear in said court on Monday, the 24th day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal]

day. **ASHLEY M. GOULD, Justice.** Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 47-8t

**Geo. E. Sullivan, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia and the State of Maryland, respectively, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of David H. Hazen, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscribers, on or before the 19th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 19th day of November, 1906. **HENRY H. HAZEN**, 1030 McCulloh st., Balto., Md.; **EMMA L. HAZEN**, 407 Sixth st., S. W., Wash., D. C. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,002. Administration. [Seal] 47-8t

**THIRD INSERTION.**

**George E. Tralles, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Ellen Larguey, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Tuesday, the 4th day of December, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 15th day of November, 1906. **ELLEN KILROY**, by George E. Tralles, Attorney. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,810. Administration. [Seal.] 46-8t

**Legal Notices.**

**Malcolm Hufty, Solicitor**  
In the Supreme Court of the District of Columbia.  
Edith M. Johnson, Complainant, v. Albanus S. T. Johnson, Defendant. Equity, No. 26,454.

The object of this suit is to obtain a divorce from the bonds of marriage on the ground of adultery. On motion of the complainant, by her solicitor, Malcolm Hufty, it is, this 12th day of November, 1906, ordered that the defendant, Albanus S. T. Johnson, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, otherwise the cause will be proceeded with as in case of default. Provided this order be published in The Washington

Law Reporter and The Washington Times  
[Seal] once a week for three successive weeks.  
HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, clerk, by Wms. F. Lemon, Asst. Clerk. 46-31

**Walter A. Johnston, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Anna Robinson alias Anna Thornton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of November, 1906. BERTT H. BROCKWAY, 610 M st. N.W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,996. Admn. [Seal.] 46-31

**Irving Williamson and James K. Bundy, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Rachel Denton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 14th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of November, 1906. ALBERT R. COLLINS, 490 E st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,756. Administration. [Seal.] 46-31

**John B. Lerner, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Mary E. Letts, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 3d day of December, 1906, at 10 o'clock A. M., as the time, and said courtroom as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 13th day of November, 1906. THE WASHINGTON LOAN AND TRUST COMPANY, by Frederick Elchelberger, by John B. Lerner, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,143. Administration. [Seal.] 46-31

**Padget & Forrest, and John E. McNally, Solicitors**  
In the Supreme Court of the District of Columbia.  
Mary Doran v. John Doran et al.  
Equity, No. 25,834.

John E. McNally and H. L. Rush, trustees herein named, having reported the sale of lot 151 in W. W. McCullough's subdivision of lots in square No. 235, to Jacob Diemer for the sum of \$5,000, it is, by the court, this 8th day of November, 1906, ordered that the said sale be finally ratified and confirmed, unless cause to the contrary be shown on or before the 10th day of December, 1906. Provided a copy of this order be published in The Washington Post and The Washington Law Reporter once a week for three successive weeks

[Seal] before said last named day. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 46-31

**Legal Notices.**

**Carlisle & Johnson, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Elizabeth Flodstrom, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscriber, on or before the 14th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of November, 1906. CLARA A. VANSIVER, Brentwood, Md. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,011. Administration. [Seal.] 46-31

**Wm. A. McKenney, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Lewis J. Davis, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 15th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands, this 15th day of November, 1906. PHILIP MAURO, 620 F st. N. W.; AMERICAN SECURITY AND TRUST CO., by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,911. Administration. [Seal.] 46-31

**Philip Walker, Solicitor**  
In the Supreme Court of the District of Columbia.  
Alfred H. Ritter v. Margaret M. Ritter and Samuel E. Love. No. 26,534. Equity Doc. 69.

The object of this suit is to obtain an absolute divorce from the defendant, Margaret M. Ritter, because of her adultery with defendant, Samuel E. Love, and custody of infant child. On motion of the complainant, it is, this 16th day of November, 1906, ordered that the defendants, Margaret M. Ritter and Samuel E. Love, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a

week for three successive weeks in The Washington Law Reporter and The Washington Post before said day. ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by R. P. Belew, Asst. Clerk. 46-31

**J. Edgar Smith, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Dexter A. Snow, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 13th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 13th day of November, 1906. CHESTER A. SNOW, 1812 Newton st.; BETTIE A. CRUSH, 712 8th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,001. Administration. [Seal.] 46-31

**John J. Brosnan, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Thomas Conkley, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 13th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 13th day of November, 1906. MAURICE FITZGERALD, 512 4 1/2 st. S. W.; WILLIAM RYAN 221 3d st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,816. Administration. [Seal.] 46-31

**Legal Notices.**

**Birney & Woodward, Solicitors**  
In the Supreme Court of the District of Columbia.  
The Trust Company of America, Complainant, v. Muriel Cridler et al., Defendants.

No. 26,554. Equity.

The object of this suit is to procure the appointment of a trustee in the place of James K. Fitzgibbon (alleged lunatic), to carry out the trusts declared in a deed of trust made by the defendants, Muriel and Thomas W. Cridler, to said Fitzgibbon and one James Ross Curran. On motion of the complainant, it is, this 14th day of November, 1906, ordered that the defendants, Muriel Cridler and Thomas W. Cridler, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This order is to be published in The Washington Post and The Washington Law Reporter once a week for

[Seal] three successive weeks. By the Court: HARRY M. CLABAUGH, Chief Justice. A true copy.

Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 46-3t

**Leckie & Fulton, Attorneys**  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.

In re Estate of Margaret McHenry, Deceased.  
Probate, No. 13,648.

The executor and trustee, William A. Foy, in the above entitled cause, having reported an offer in writing to purchase for the sum of twenty-two hundred and fifty dollars (\$2,250) in cash, the following property, to wit: Part of lot 8 in Kelly and Thompson's subdivision of lots in square numbered 783, as per plat recorded in the office of the surveyor for the District of Columbia in Liber W. F. at folio 186, beginning at the southwest corner of said lot; thence north along First street 16 feet; thence east 100 feet; thence south 16 feet to "D" street; thence west along "D" street 100 feet to the beginning, it is, this 9th day of November, A. D. 1906, ordered that the said executor and trustee be, and he is hereby, authorized to accept said offer, and upon compliance with the terms of sale by the purchaser, the said sale shall stand ratified and confirmed, unless cause to the contrary be shown on or before the 10th day of December, A. D. 1906. Provided a copy of this order be published in The Washington Law Reporter once a week for three

[Seal] successive weeks before said last mentioned date. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 46-3t

[Filed November 15, 1906. J. R. Young, Clerk.]

**W. H. Linkins, Solicitor**  
In the Supreme Court of the District of Columbia,  
Holding an Equity Court.

Benina M. Glover, Complainant, v. John J. Leroy et al., Defendants. In Equity. No. 26,291.

The object of this suit is to declare the title of the complainant to part of original lot numbered eight (8), in square numbered eighty (80), in the city of Washington, District of Columbia, beginning for the same at the northwest corner of said lot and running thence south along the line of Twenty-second street, twenty-eight (28) feet; thence east sixty-two (62) feet two (2) inches; to the easterly line thereof; thence north twenty-eight (28) feet; and thence west sixty-two (62) feet two (2) inches; to the place of beginning, to be good of record in her in fee simple by reason of the adverse possession. On motion of the complainant, by her solicitor, William H. Linkins, it is, by the court, this 15th day of November, 1906, ordered that the defendants, John J. Leroy, Jacob Moyer, Jacob Myer, Bernard Gilpin, Thomas J. Lowery, and Thomas Weatherall, or Thomas Weatherall, and John Barcroft, executors, and John Little, George W. Harkness, trustee, Forrester Young, Sarah McTiers, and Thomas Weaver, and their or either of their unknown heirs, devisees, grantees, or alienees, either immediate or mediate, or the heirs of such person, or as claiming under, by or through either of said parties, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise will be proceeded with as in case of default. Provided this order shall be published once a week for four successive weeks in The Washington Law Reporter and The Evening Star, before said return day, two of which publications shall be the last two weeks in November, 1906, it appearing to the Court, upon good cause shown, based upon the affidavit filed herein, that further publication in this cause is unnecessary.

[Seal] ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by F. L. Cunningham, Asst. Clerk. 46-4t

**Legal Notices.**

**William C. Prentiss, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Kuni-gunda Fedarwisch, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 3d day of December, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 14th day of November, 1906. JOHN T. BRANSON, by William C. Prentiss, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,177. Adm. [Seal.] 46-3t

**Albert Sillers, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Mary McCullough, Deceased.

No. 12,916. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Robert E. McCullough, it is ordered, this 5th day of November, A. D. 1906, that George C. McCullough and Mary McCullough and all others concerned appear in said court on Monday, the 10th day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] HARRY M. CLABAUGH, Chief Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 46-3t

**Berry & Minor, Attorneys**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Augusta R. Thurlow, Deceased.

No. 13,956. Administration Docket 85.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Elizabeth J. Scott, it is ordered this 12th day of November, A. D. 1906, that Francis M. Thurlow, Stephen Henry Thurlow, Robert Thurlow, Frank Thurlow (a minor), Albert Thurlow (a minor), and all others concerned, appear in court on Monday, the 17th day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return

[Seal] day. HARRY M. CLABAUGH, Chief Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 46-3t

**Wm. A. McKenney, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of John McAllister Schofield, Deceased.

No. 13,948. Administration Docket —.

Application having been made herein for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by Georgia K. Schofield, it is ordered, this 12th day of November, A. D. 1906, that Laura Schofield, Richard McA. Schofield, Mary S. Andrews, and Georgina Schofield, a minor, and all others concerned, appear in said court on Monday, the 17th day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return

[Seal] day. HARRY M. CLABAUGH, Chief Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 46-3t

**Legal Notices.**

**Harold H. Simms, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Charles W. Kelly, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of May, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of November, 1906. **JULIA B. KELLY, Langdon, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,854. Administration. [Seal.]** 46-St

**Tucker & Kenyon, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of May A. Brooke, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 13th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 13th day of November, 1906. **JULIA McALLISTER, 940 K st. N. W.; ERNEST G. THOMPSON, 681 Penn. ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,917. Administration. [Seal.]** 46-St

**Charles J. Murphy, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Walker Scott Fowler, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscriber, on or before the 14th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of November, 1906. **WILLIAM W. MORONEY, 156 N. St. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,018. Administration. [Seal.]** 46-St

**James A. Toomey and W. D. Sullivan, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the State of Maryland and the District of Columbia, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Owen Woods, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscribers, on or before the 13th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 13th day of November, 1906. **FRANCIS X. MCKINNY, St. Charles College, Ellicott City, Md.; HENRY J. McDERMOTT, 2111 12th st. N. W., Wash., D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,702. Administration. [Seal.]** 46-St

**R. E. Mattingly, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Holding Equity Court.**

**Mattie Server Meloney, Complainant, v. Clarence W. Meloney and Florence Chilcott, Defendants,**  
**Equity. No. 28,574.**

The object of this suit is to obtain a divorce from the bonds of marriage on the ground of adultery. On motion of the complainant, by her solicitor, Robert E. Mattingly, it is, this 12th day of November, A. D. 1906, ordered that the defendants, Clarence W. Meloney and Florence Chilcott, cause their appearances to be entered herein on or before the fortieth day exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order. Provided this order be published in The Washington Law Reporter and in The Washington Times once a week for three successive weeks. By the Court: **HARRY M. CLABAUGH, Chief Justice. A true copy.**

Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 46-St

**Legal Notices.****FIFTH INSERTION.**

[Filed November 1, 1906.]

**A. Leftwich Sinclair, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Special Term as a District Court of the United States for the District of Columbia.**  
**In the Matter of the Payment of Damages Resulting to Adjacent Property From Changes in the Grades of Streets, Avenues, and Alleys Authorized by the Act of Congress Approved February 28, 1903, Relating to the Construction of a Union Railroad Station in the District of Columbia.**  
**District Court No. 871.**

Notice is hereby given that we, the undersigned, having been designated and appointed by the Supreme Court of the District of Columbia, holding a special term as a United States District Court for the District of Columbia, as a commission to appraise the damages resulting to adjacent property from changes in the grades of streets, avenues, and alleys authorized by the act of Congress approved February 28, 1903, relating to the construction of union railroad station in the District of Columbia will meet at 40 30 o'clock A. M., on Wednesday, the 12th day of December, A. D. 1906, at the United States Court House (City Hall), in the District of Columbia, in a room to be assigned us by the United States Marshal for said District, for the purpose of viewing the property affected by the changes of the grades of the following-named streets, avenues, and alleys, and hearing testimony touching the damages resulting to real property from said changes of grade, in accordance with the terms and provisions of the act of Congress approved April 22, 1904, entitled "An act to provide for payment of damages on account of changes due to construction of the Union Station, District of Columbia," to wit: Second street northeast, Third street northeast, and K street northeast, around square numbered seven hundred and fifty (750), and the alleys and minor street (Parker street) in said square; Delaware avenue and Second street northeast, around square numbered seven hundred and forty-eight (748); and Third street northeast, between L and M streets. All owners of real property damaged by the changes in the grades of said streets, avenues, or alleys will file a petition with us, in this cause, signed and sworn to, for an allowance of damages within sixty (60) days after the said 12th day of December, A. D. 1906. The aforesaid act of Congress approved April 22, 1904, provides that upon the failure of any such owner to thus present his claim, within said period, his right to do so shall cease and determine. **CHARLES A. BAKER, GEORGE W. MOSS, GEORGE SPRANSKY, Commission to Appraise Damages. A true copy. Test: J. R. Young, Clerk, by T. E. Cunningham, Asst. Clerk.** nov. 2, 9, 16, 23, 30; dec. 7.

**SIXTH INSERTION.**

**Ralston & Siddons, Solicitors**

**In the Supreme Court of the District of Columbia.**  
**Joseph Ralston Morris v. The Unknown Heirs, Devises, and Allenees of Appelona Whitehair, and The Unknown Heirs, Devises, and Allenees of Justinian Mayberry. Equity No. 26,496. Dec. 58.**

The object of this suit is to obtain a decree of this court vesting title by adverse possession in the premises known as sublot nineteen (19) in square one hundred and three (103), Washington, D. C., as per plat recorded in liber H. D. C., folio 145 of the District of Columbia land records. On motion of the complainant, by Ralston & Siddons, his solicitors, it is, this 18th day of September, 1906, ordered that the defendants, the unknown heirs, devisees, and allenees of Appelona Whitehair, and the unknown heirs, devisees, and allenees of Justinian Mayberry, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three months in The Washington Law Reporter and The Evening Star before

[Seal] said date. **HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. W. Latimer, Asst. Clerk.**

sept 21, 28; oct 19, 26; nov 23, 30

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street, N. W.

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WASHINGTON, D. C. - - - DECEMBER 7, 1906

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## DECISIONS BY THE COURT OF APPEALS.

### Wills; Equitable Conversion; Advancements.

In *Miller v. Payne*, the appeal was from an order of the Probate Court confirming an auditor's report. It appeared that a testatrix by her will directed that her real estate be sold one year after her death, and the proceeds distributed among her five children. Subsequently to the date of the will she advanced to one son sums aggregating about one-half the value of her estate, and these advancements were shown to have been intended as an ademption of the provision made by the will for said son. The latter, however, after her death, conveyed his interest in the estate to appellant. The real estate was sold within the year, the heirs executing the deeds, appellant signing for the son who had conveyed to him. The Court of Appeals, in an opinion by Mr. Justice Robb, holds, affirming the decree below, that the direction in the will operated an equitable conversion of the real estate; that the advancements to the son, being greater in amount than his interest under the will in the proceeds of the real estate, operated as an ademption of that interest; that the deed of said son to appellant was in effect merely an assignment of whatever interest the son had in the proceeds of sale; appellant can claim no higher right than his assignor had, and, therefore, took nothing by his assignment.

### Descents; Descendants of Maternal Grandfather; Distribution Per Stirpes.

In *McManus v. Lynch*, the construction of sections 948, 949, 960, and 965 of the Code was involved. It appeared that one B. died intestate, seized of certain real estate, and leaving as her heirs at law certain descendants of her maternal grandfather, being three first cousins and two sets of second cousins. The grandfather left but one son, who died leaving surviving a son P., and three daughters, B. (the intestate), K., and L. P. died leaving a widow and two children; K. died, leaving one daughter, a grandchild, sole issue of a deceased son, and five grandchildren, issue of another deceased son; and L. died leaving one son. The real estate was sold in partition proceedings, and the question arose as to the distribution of the proceeds of sale. The auditor, to whom the matter was referred, distributed the proceeds as follows: One-third to the widow and children of P., the brother of intestate; one-third to the son of L., a deceased sister of intestate; and of the remaining one-third, being the share to which K. would have been entitled had she survived, he distributed one-third part to her daughter, one-third part to the one grandchild, and one-third part to the five grandchildren, issue of deceased sons. The appellants (the descendants of K.) claimed that the court erred in making distribution *per stirpes* of the maternal grandfather; but the Court of Appeals, in an opinion by Mr. Justice McComas, affirms the decree of the court below, which confirmed the report of the auditor.

### Landlord and Tenant; Plea of Title.

In *McFarlane v. Kirby*, the appeal was from a judgment of the court below in a landlord and tenant proceeding. The case originated before a justice of the peace, where a plea of title was interposed, whereupon it was duly certified to the Supreme Court of the District in accordance with the provisions of the Code. The trial court directed the jury to return a verdict for the plaintiff for possession of the premises and \$129.50 as intervening rent and damages. The Court of Appeals, in an opinion by Mr. Justice McComas, affirms the ruling of the court below.

### Patent Appeals Decided.

Per Shepard, C. J.: No. 364, *Duryea v. Rice*, affirmed; No. 380, *In re Duncan et al.*, affirmed; Nos. 377-378, *In re American Circular Loan Co.*, affirmed; No. 368, *Kreeg v. Geen*, reversed.

Per McComas, J.: No. 366, *Shuster Co. v. Muller*, affirmed; No. 379, *In re Volkman et al.*, affirmed; No. 391, *Hall v. Ingram*, affirmed.

Per Robb, J.: No. 382, *In re McNeil et al.*, affirmed; No. 363, *Beechman v. Southgate*, affirmed; No. 367, *In re Hoey*, affirmed, No. 396, *Rose Shoe Co. v. Rosenbush*, reversed.



## Court of Appeals of the District of Columbia.

### COLUMBIA NATIONAL SAND DREDGING COMPANY ET AL., APPELLANTS,

v.

### GEORGE B. MORTON ET AL.

EQUITY JURISDICTION; INJUNCTION; TRESPASS TO LAND IN ANOTHER JURISDICTION.

1. An action for trespass to land, involving necessarily and chiefly the question of title, is local, and can only be brought in the jurisdiction wherein the land is situated.
2. A court of equity in this District, although having jurisdiction of the persons of the defendants, can not restrain them from committing acts of trespass upon lands in another jurisdiction where the principal fact involved, and that upon which the right to exercise the restraint depends, is that of title to the land.
3. The allegations of the bill of complaint and answer in the present case, in which it was sought to enjoin the defendants from taking sand and gravel from a bar in Piscataway Creek, lying wholly within the State of Maryland, to which bar complainants claimed title, and which claim was denied by defendants, held to show that the principal question involved was whether complainants had title to the bar as claimed, and that such being the case, a court of equity in this District was without power to entertain the suit.

No. 1878. Decided November 7, 1905.

APPEAL by defendants from a decree of the Supreme Court of the District of Columbia, in Equity No. 25,485, granting a perpetual injunction. Reversed and dismissed.

*Mr. J. K. McCammon* and *Mr. James H. Hayden* for the appellants.

*Mr. Geo. E. Hamilton*, *Mr. M. J. Colbert*, and *Mr. John J. Hamilton* for the appellees.

*Mr. Chief Justice SHEPARD* delivered the opinion of the Court:

This is an appeal from a decree perpetuating an injunction against acts of continued trespass upon land. George B. Morton, a resident and citizen of Prince George's County, Md., and the Potomac Dredging Co., of Baltimore, a corporation of the State of Maryland, filed their bill against the Columbia National Sand Dredging Co., a corporation of the State of Virginia, maintaining an office in the District of Columbia, and against Lewis E. Smoot, a resident of said District. The bill alleges that George B. Morton is owner in fee simple of a certain tract of land known as Auburn, located on the southern side of Piscataway creek, in Prince George's County, Md., and is entitled to the bed of said creek to the head of the stream, which forms the northern boundary thereof for a long distance, as appears from the original deed conveying said property to him, which is made an exhibit to the bill. That some distance from the shore, but well south of the thread of the creek, is a sand and gravel bar, attached at places to said shore, and short distances beyond this are other deposits of sand and gravel, which by reason of the formation of the shore line are gradually added to and form accretions to said shore, and all of which belong to said Morton. That for a valuable consideration said Morton had granted to the Potomac Dredging Company the exclusive privilege until May 1, 1909, of taking away said sand and gravel from said shore, and the said

bar in front of said shore, and from the gravel flats attached thereto. That the said company made a channel up said creek, into said bar, and made it possible to come in contact with the said deposits of sand and gravel attached to and forming part of the said shore. That this sand and gravel is valuable for building purposes and the said company can and does sell the same profitably in the District of Columbia, paying the said George B. Morton a fair sum for the privilege of taking the same. That after the said company had, at great expense, made the channel for its use and benefit, the defendant corporation brought one of its dredging plants up said channel and took large quantities of sand and gravel from the bar heretofore referred to as belonging to complainant, and continued same until complainant replevied some scow loads so taken, which they were able to follow, though with much trouble. That within a few days past one of the dredging plants belonging to the defendant Smoot moved into the same position at the direction of defendants, and is now engaged in taking large and valuable quantities of sand and gravel heretofore referred to as belonging to complainants, though complainants have requested and warned them to desist. That the damage such wrongful taking has caused and will continue to cause complainants, though amounting to many hundreds of dollars, is not susceptible of accurate or even approximate measurement, so as to make it possible for them to obtain adequate compensation in damages for the wrongful taking thereof, and will necessitate the institution of a large number of suits; and, inasmuch as the damage is irreparable, and the quantities taken are so extremely difficult, if not impossible, to approximate, and it is impracticable to follow and replevin the property taken and carried away, complainants aver that they should have an injunction to restrain the further taking of sand and gravel from the premises aforesaid.

The restraining order was granted, and on June 16, 1905, the defendants filed a joint answer in which they denied that the said Morton is entitled to any part of the bed of the said creek, and alleged that the northerly boundary line of his land is the high-water mark on the southerly margin of said creek, as appears from two deeds recorded among the land records of Prince George's County, whereunder the said Morton and his predecessors in title derived and obtained any and all right, title, or interest which they or any one of them has or had in and to the land referred to in the bill. Copies of said deed and a plat of the land referred to are attached and made an exhibit. The defendants further answered that the said creek is a navigable water of the United States, and a public river of the State of Maryland, and that the entire right and title to the bed thereof is in the State of Maryland and not in the complainants, or either of them, as alleged; and they further denied that the sand and gravel bar described constitutes an accretion appurtenant to any land owned by the complainant Morton, and aver that he has no right or title to the same. They admit the taking of sand and gravel from the bar aforesaid under a written permit and grant to defendants by the Secretary of War of the United States on April 14, 1903, the same



being attached and made an exhibit to the answer. They further aver that the complainants instituted criminal proceedings against them under an act of Maryland of March 3, 1900, providing that persons wilfully trespassing upon the lands of others should be subjected to fine or imprisonment, and caused agents and employees of defendant to be arrested and placed in jail in the State of Maryland, from which they were released on writs of habeas corpus issued out of the Circuit Court of Prince George's County, Maryland. They further aver that complainants brought a suit in equity against defendants in the Circuit Court of Prince George's County, Maryland, on or about June 9, 1905, making substantially the same allegations and asking the same relief as in this bill, but that the same was dismissed by complainants on June 13, 1905, for the reason that the said court had declined to grant the preliminary injunction forbidding the defendants from dredging, taking, or removing sand and gravel from the sand and gravel bar hereinbefore mentioned. Upon this answer they moved to dissolve the restraining order, but the same was overruled and continued in force until final decree.

Testimony was then taken and resulted in a final decree entered April 13, 1906, sustaining the bill and perpetually enjoining the defendants from taking and removing by dredge or otherwise sand and gravel or other materials from the bar or deposit of sand and gravel attached to the shore or in front thereof, and extending into and towards the center of Piscataway Creek in the State of Maryland, in front of and bounding on the farm known as Auburn in Prince George's County in said State, belonging to George B. Morton.

No objection was taken by pleading or otherwise to the jurisdiction of the court in the premises, and the same was assumed and maintained without consideration. The appeal is from the decree on its merits.

When this case was called for hearing on appeal no suggestion of want of jurisdiction was made by the appellants, but the court, of its own motion, declined to hear argument on the merits of the questions involved, until satisfied that the court below had jurisdiction of the subject-matter of the bill; and argument was required on the point. The submission was on that question and none other.

It is plain from the allegations of the bill and answer that the necessary question to be determined in the suit is whether George B. Morton has title to the sand and gravel bar, lying wholly within the State of Maryland, either by deed conveying the title to the middle line of Piscataway Creek, or, in case the boundary of the land conveyed thereby shall be confined to the shore of said creek, as an accretion to his land upon the shore. This is not only the principal, but substantially the only question involved.

It is to the principal question involved in any case that we look to determine whether the action be local or transitory in its nature. If the principal fact carry with it the idea of some certain place, for example, relates to land, it is local and the action must be maintained in the place where it is situated. If an action had

been brought at law for a trespass upon the land in question in removing sand and gravel therefrom, the Supreme Court of the District would clearly have had no jurisdiction. *Ellenwood v. Marietta Chair Co.*, 158 U. S., 105. In that case an action was brought in the Circuit Court of the United States for the district of Ohio, alleging continued acts of trespass upon the land of plaintiff in the State of West Virginia, as well as the cutting and removing therefrom of large quantities of timber. No question of the jurisdiction was made by the defendant, but the court of its own motion ordered the case stricken from the docket for want of jurisdiction. In affirming that judgment, the Supreme Court of the United States, speaking through Mr. Justice Gray, said:

"By the law of England, and of those States of the Union whose jurisprudence is based upon the common law, an action for trespass upon land, like an action to recover the title or the possession of the land itself, is a local action and can only be brought within the State in which the land lies. . . . The original petition contained two counts, the one for trespass upon land, and the other for taking away and converting to the defendant's use personal property; and the cause of action stated in the second count might have been considered as transitory, although the first was not. . . .

"But the petition, as amended by the plaintiff, on motion of the defendant, and by order and leave of the court, contained a single count, alleging a continuing trespass upon the land by the defendant, and the cutting and conversion of timber grown thereon. This allegation was of a single cause of action, in which the trespass upon the land was the principal thing, and the conversion of the timber was incidental only, and could not, therefore, be maintained by proof of the conversion of personal property, without also proving the trespass upon real estate. *Cotton v. U. S.*, 11 How., 229; *Eames v. Prentice*, 8 Cush., 337; *Howe v. Wilson*, 1 Denio, 181; *Dodge v. Colby*, 108 N. Y., 445; *Merriman v. McCormick*, *Harvesting Co.*, 86 Wis., 142. The entire cause of action was local. The land alleged to have been trespassed upon being in West Virginia, the action could not be maintained in Ohio."

The contention that the doctrine of this case is impaired by the later case of *Stone v. U. S.*, 167 U. S., 178, 182, is untenable. As we have seen, it was said in the former case that if the cause of action had been confined to the recovery of timber removed from the land the action might have been considered as transitory. In the *Stone* case the action was to recover the reasonable value of lumber and railroad ties manufactured from trees alleged to have been unlawfully cut by the defendant *Stone* from certain lands in Idaho belonging to the United States. The jurisdiction of the District court of the United States for the State of Washington, in which the suit was brought, was affirmed. Referring to the case of *Ellenwood v. Marietta Chair Co.*, supra, Mr. Justice Harlan said: "But this case proceeded upon the theory that the allegations of the petition, at the time it was tried, presented a single cause of action, in which the trespass upon the land was the principal thing, and the conversion of

the property was incidental only, and, therefore, that the entire cause of action was local. In the present case the petition, it is true, avers that the United States was the owner of the lands from which the trees were cut, but the gravamen of the action was the conversion of the lumber and the railroad ties manufactured out of such trees; and a judgment was asked, not for the trespass, but for the value of the personal property so converted by the defendant. The description in the petition of the lands and the averment of ownership in the United States were intended to show the right of the Government to claim the value of the personal property manufactured from the trees illegally taken from its lands. Although the denial of the ownership of the land made it necessary for the Government to prove its ownership, the action in its essential features related to personal property, was of a transitory nature, and could have been brought in any jurisdiction in which the defendant could be found and served with process. And a suit could have been brought to recover the property wherever it could be found. In *Schulenberg v. Harriman*, 88 U. S., 21 Wall., 44, 14, it was said: "The title to the land remaining in the State, the lumber cut upon the land belonged to the State. Whilst the timber was standing it constituted part of the realty; being severed from the soil its character was changed; it became personalty, but its title was not affected; it continued as previously the property of the owner of the land, and could be pursued wherever it was carried. All the remedies were open to the owner which the law affords in other cases of the wrongful removal or conversion of personal property."

The distinction between the two cases is thus clearly defined. It follows, therefore, that an action for trespass upon the land, involving necessarily and chiefly the question of its title, is local and could only be brought in the jurisdiction wherein the land is situated; on the other hand, an action to recover the value of the sand and gravel severed from the land and removed therefrom, though incidentally made to involve the question of title, could be maintained in the District of Columbia against parties found therein and personally served with process.

It is contended, however, that because the equity jurisdiction is rightfully invoked to restrain acts of continuing trespass upon the land working injuries irreparable at law, as well as to prevent a multiplicity of suits, the difficulty with the action of trespass at law is obviated by reason of the principle that equity acts in personam and not in rem. In other words, that the court of equity in this District, having jurisdiction of the persons of the defendants, may restrain them from committing acts of trespass upon lands in Maryland notwithstanding the principal fact involved, and upon which the right to exercise the restraint depends, is that of title to the land. We can not agree with this contention. From a very early period courts of equity, having jurisdiction of the person of a party, have exercised the power to compel him to perform a contract, execute a trust, or undo the effects of a fraud, notwithstanding it may relate to, or incidentally affect the title to land in another

jurisdiction. The doctrine is thoroughly well established within this limitation, that the principal question involved must be one of contract, trust, or fraud, raising up a duty which a person within the power of the court may be compelled to perform, although the act when performed may operate to affect, and even to pass the title to land outside the territorial jurisdiction of the court. As was said by Mr. Justice Field in *Pennoy v. Neff* (95 U. S., 714, 723): "Thus the State, through its tribunals, may compel persons domiciled within its limits to execute, in pursuance of their contracts respecting property elsewhere situated, instruments in such form and with such solemnities as to transfer the title, so far as such formalities can be complied with; and the exercise of this jurisdiction in no manner interferes with the supreme control over the property by the State within which it is situated. *Penn v. Lord Baltimore*, 1 Ves., 444; *Massie v. Watts*, 6 Oranch, 148; *Watkins v. Holman*, 16 Pet., 25; *Corbett v. Nutt*, 10 Wall., 464."

The leading case upon this question, to which reference is universally made, is that of *Penn v. Lord Baltimore*, 1 Vesey, 444; s. c. L. O. Eq. (4 Am. Ed.) 1806. The bill was filed in England, where both parties resided at the time, to compel specific performance of a contract entered into by them providing for the establishment of the boundaries of their respective grants of Pennsylvania and Maryland. In defining the grounds upon which he maintained jurisdiction in the case, Lord Hardwicke said: "This court therefore has no jurisdiction of the direct question of the original right of the boundaries, and this bill does not stand in need of that. It is founded on articles executed in England under seal for mutual consideration, which gives jurisdiction to the king's court both in law and in equity, whatever be the subject-matter. . . . The conscience of the party was bound by the agreement; and being within the jurisdiction of the court which acts in personam, the court may properly decree it as an agreement, if a foundation for it."

The learned American editors in their notes to the above case (2 L. O. Eq., 1880), after reviewing the American decisions, say: "It will be observed that in the foregoing cases the jurisdiction attached on the ground of the defendant's fraud or failure to perform some equitable obligation, irrespective of any question of title, and the decree was capable of being enforced against the person of the defendant. And although equity has no jurisdiction over naked questions of title to real estate, yet it will not refuse to determine a controversy which, in other respects, is within its jurisdiction, because it incidentally adjudicates upon the title to lands without its control. But these cases must not be confused with another and totally different class, wherein the validity of rights claimed under a disputed title to lands in other States becomes the primary question, and the decree depends upon the construction given. Here the relief will be refused unless under very peculiar circumstances, for to hold otherwise would be to try an ejectment through the medium of a court of chancery, governed by rules possibly

differing from those in force where the land is situate, and whose decree would be utterly ineffective as to the subject-matter of the controversy."

And they further say in conclusion: "The result of the cases as a whole, would seem to be that, as the right of real property is essentially local and can only be enforced at law by a recourse to the local tribunals, equity will follow the law, and refuse to assume a power which might further the purposes of justice in particular instances, but would ultimately disturb the comity which ought to exist between the courts of different nations, by bringing the decisions of former tribunals into conflict with those of the *locus rei sitæ*. . . . But rights growing out of trust or contract, or founded upon a fraudulent violation of the principles of equity as between man and man, are purely personal, and will consequently be upheld and enforced both by law and equity whenever jurisdiction has been acquired over the parties, without regard to the nature or situation of the property in which the controversy has its origin, and even when the relief sought consists in a decree for the conveyance of land which lies beyond the control of the court, and can only be reached through the exercise of its powers over the person."

The question was first passed on by the Supreme Court of the United States in *Massie v. Watts*, 6 Cranch, 148, the opinion in which was delivered by Chief Justice Marshall. In that case a bill was filed by a citizen of Virginia in the Circuit Court of the United States for the District of Kentucky, against *Massie*, a citizen of Kentucky, to compel the latter to convey to the former 1,000 acres of land in the State of Ohio, the defendant having obtained the legal title by fraud. Complainant claimed the equitable title and alleged certain fraudulent surveys by the defendant through which he had appropriated complainant's land. Appeal was taken from a final decree establishing complainant's title and directing the defendant to execute a conveyance to him for the land. In affirming that decree, the Chief Justice said on the question of jurisdiction:

"Was this cause, therefore, to be considered as involving a naked question of title; was it, for example, a contest between *Watts* and *Powell*, the jurisdiction of the circuit court of Kentucky would not be sustained? But where the question changes its character, where the defendant in the original action is liable to the plaintiff, either in consequence of a contract, or as trustee, or as the holder of a legal title acquired by any species of *mala fides* practiced on the plaintiff, the principles of equity give a court jurisdiction wherever the person may be found, and the circumstance, that a question of title may be involved in the inquiry, and may even constitute the essential point on which the case depends, does not seem sufficient to arrest the jurisdiction."

After reviewing the English authorities, commencing with the case of *Penn v. Lord Baltimore*, supra, he further said:

"Upon the authority of these cases, and of others which are to be found in the books, as well as upon general principles, this court is of opinion, that, in a case of fraud, of trust, or of

contract, the jurisdiction of a court of chancery is sustainable wherever the person be found, although lands not within the jurisdiction of that court, may be affected by the decree." See, also, *Carpenter v. Strange*, 141 U. S., 87, 106.

The doctrine announced has been followed by the same court ever since without question, for we can not regard the case of *Phelps v. McDonald*, 99 U. S., 298 (relied on by the appellants), either as furnishing an exception to it, or as extending its limitations. In that case the bill was filed in the Supreme Court of the District of Columbia by *Phelps*, who had regularly been appointed assignee in bankruptcy under proceedings in the District Court of the United States for the Southern District of Ohio, declaring *McDonald* a bankrupt. In the schedule of assets filed by the bankrupt was a brief statement of a claim against General *Osborne*, of the United States Army, and others, "for burning in January and February, 1865, from 1,000 to 2,000 bales of my cotton in Arkansas and Louisiana." There was no further description of the claim except that in a duplicate schedule filed in the office of the register, the amount is stated as 7,000 to 8,000 bales, and the claim there, with others, is designated as worthless. *McDonald* was duly discharged in bankruptcy on March 17, 1869. The assignee, having obtained an order to sell certain accounts, notes and judgments of the bankrupt, sold them at public sale, including the claim aforesaid. One *White* became the purchaser of the uncollected accounts, and it is alleged that the purchase was made for *McDonald* with money furnished by him, and the claim transferred to him by *White*. It was then alleged that, prior to the filing of his petition in bankruptcy, *McDonald* had a just and valid claim against the United States for cotton destroyed by the army, that, being a British subject (a fact concealed in describing the claim), although for many years a resident of this country, he prosecuted the claim before the joint British and American Commission, organized under the treaty of May 8, 1871; that the claim was finally adjudged to be valid, and on September 23, 1873, the commission awarded the sum of \$197,900 to be paid in gold by the Government of the United States to the Government of Her Britannic Majesty, in respect of the above claim. That the United States had paid the money to the agent of the British Government in the City of Washington, who was about to pay the same to *McDonald*. An injunction was prayed restraining *McDonald* and *White*, or either of them, from receiving said award, and for a decree that said fund be held in trust for the creditors of *McDonald* and be subject to the complainant's rights as assignee in bankruptcy. Process was formally served on both defendants and a temporary injunction was awarded. Subsequently by consent of parties, a decree was made that one-half of the amount of the award be received by the defendants to pay the expense of prosecuting the claim before the joint commission, and the other half placed in the hands of *George W. Riggs* as receiver to await the final action of the court; and that *McDonald* execute all orders, receipts, and acquittances necessary to enable the receiver to obtain the fund. The defendants

withdrew their answer and filed a demurrer to the effect that the court below had no jurisdiction of the case; and upon other grounds relating to the rights of the complainant. The demurrer was sustained, the bill dismissed, and on appeal the decree was reversed. The opinion of the majority of the court was delivered by Mr. Justice Swayne, who said: "In this case, whether the money be here or abroad, the assignee is entitled to have the question finally settled whether he or McDonald was the better right. This court has twice decided that a British subject can sue the United States in the Court of Claims, because an American citizen is entitled to sue the British Government by a petition of right. The act of Congress creating this court requires reciprocity. *U. S. v. O'Keefe*, 11 Wall., 178; *Carlisle v. U. S.*, 16 Wall., 147.

"If the claim of the assignee were presented to the British Government by a petition of right, and the claim of McDonald was also presented, the parties, in the absence of any judicial determination, would, doubtless, be required to settle their controversy by interpleading, or in some other appropriate form of litigation. If the appellant shall be finally successful in this case, and the record should be presented with his petition, no such question could arise and judgment in his favor must necessarily follow. Conceding the fund to be there, why should not the question of paramount right be settled in this case, rather than that the American claimant should be subjected to the delay, expense and other inconveniences of a suit before a foreign tribunal? The adjudication would be as binding in one case as in the other.

"Where the necessary parties are before a court of equity, it is immaterial whether the res of the controversy, whether it be real or personal property, is beyond its territorial jurisdiction. It has the power to compel the defendant to do all things necessary, according to the *lex loci rei sitæ*, which he could do voluntarily, to give full effect to the decree.

"Without regard to the situation of the subject-matter, such courts consider the equities between the parties, and decree in personam according to those equities, and enforce obedience to their decrees by process in personam. 2 Story Equity, sec. 899; *Miller v. Sherry*, 2 Wall., 249; *Penn v. Lord Baltimore*, 1 Ves., 444; *Mitchell v. Bunch*, 2 Paige, 606."

Notwithstanding some of the language of the opinion, it is to be observed as in *Massie v. Watts* (supra), the case involved a fraud committed by the defendant in reobtaining the title; and having jurisdiction of his person, the court could compel him to execute such an assignment as would be necessary to revest the title of the defrauded assignee in bankruptcy; and the money having been voluntarily deposited in the custody of the court it could be ordered paid to the established owner.

A recent case in the House of Lords of England carries the doctrine of jurisdiction, by virtue of power over the person, to a great length, but it was maintained because the bill sought the enforcement of a duty under a trust relating to the personal estate of a deceased testator. *Ewing v. Orr-Ewing*, L. R. 9 App. Cas., 34, 40. In that case a testator, domiciled in Scotland

and possessed of a large personal estate in that country and a smaller one in England, by a will made in Scotch form, appointed six persons to be executors and trustees, three of whom resided in England and three in Scotland. The trustees obtained confirmation of the will in Scotland and this was confirmed by the English court of probate. An infant legatee, resident in England, brought suit in England through his next friend, for the administration of the estate as one of the beneficiaries of the trust. Service was had upon all of the trustees, who entered appearance and obtained an order of reference to ascertain if the prosecution of the action would be for the infant's benefit. Upon this reference, the order for further prosecution was made, from which no appeal was taken. Before the action came to trial, the trustees removed all of the English personality to Scotland. It was held that the English court had jurisdiction to administer the trusts of the will as to the whole estate, and that, as no proceedings were pending in Scotland by which the interest of the infant would have been clearly protected, the jurisdiction was not discretionary, but that the decree was a matter of course.

Lord Chancellor Selborne said: "A jurisdiction against trustees which is not excluded *ratione legis rei sitæ* can not be excluded as to movables because the author of the trust may have had a foreign domicile; and for this purpose it makes no difference whether the trust is constituted *inter vivos*, or by a will, or *mortis causa* deed. Accordingly it has always been the practice of the English Court of Chancery to administer, as against executors and trustees personally subject to its jurisdiction, the whole personal estate of testators or intestates who have died domiciled abroad, by decrees like that now in question. The appellant's counsel were not able to produce any precedent for an administration decree limited (where there was a general probate and a general trust) to assets locally situate within the jurisdiction. . . . The English jurisdiction was sustained on the same principle in *Johnstone v. Beattie*, 18 Cl. & F., 42, 84. If English trustees, having English trust funds, were found within the jurisdiction of the Scottish courts, those courts, upon the same principle, might compel them to do their duty. *Ferguson v. Douglas*, 3 Pat. App. Cas., 503, 510."

In another recent English case, the facts of which are analogous to those of the case at bar, the court distinguished the decision in *Ewing v. Orr-Ewing* (rendered in the Chancery Division, and not then decided on appeal), and expressly maintained the limitation of the equity jurisdiction, acting in personam, that we have here attempted to point out. *Graham v. Massie*, L. R., 23 Ch. Div., 743.

That suit was brought to recover three-fourths of one moiety of the purchase money of a house in Dresden, Saxony, sold by Charles Stewart Hawthorne, the testator. The defendants were his executors and devisees in trust. The house originally belonged to Colonel Hawthorne, a domiciled Irishman, and his wife, Sarah, jointly. By his will, dated in 1861, he gave his real and personal estate, which would include his moiety of the house, to trustees in

trust to pay the rents, profits, etc., to his wife, Sarah, for life, and after her death, upon trust for his daughter, Mabella. This will was not executed according to Saxon law. Colonel Hawthorne left his widow and a daughter, Georgiana, surviving; his daughter Mabella having died in his lifetime. The widow died on the 31st of May, 1875, leaving a will executed according to Saxon law, by which she devised all her real and personal property at her residence in Dresden, including this house, to Charles Stewart Hawthorne. In 1875 he sold the house, received part of the purchase money, and the remainder was secured to him by a mortgage of the house, according to Saxon law. He died in 1877. The plaintiffs in this were the administrator and the widow and children of John Graham, the surviving husband of Georgiana. It was alleged in effect, that on the death of Colonel Hawthorne, one moiety of the house, subject to his widow's life interest, devolved by Saxon law, as to three-fourths part, on Georgiana, and the remaining one-fourth on Sarah Hawthorne, who was entitled to the other moiety, and that on the death of Georgiana in 1863, John Graham became by Saxon law entitled to her three-fourths of one moiety, and that he died intestate. Plaintiffs, as his administrator and next of kin, respectively, claimed three-fourths of one moiety of the purchase money, with interest, against the estate of Charles Stewart Hawthorne. It was also alleged that on the death of Sarah Hawthorne, Charles Stewart Hawthorne procured himself to be registered in Dresden as the owner of the house, and so became the legal owner, and that by Saxon law he could confer an indefeasible title on a purchaser; but that a seller under such circumstances became by the law responsible to the person really entitled, if he had acted bona fide, for the purchase money of which he became a trustee for the person really entitled. The defense denied utterly the claims of the plaintiffs, and alleged that Charles Stewart Hawthorne was sole and legal owner of the entirety of the house for his own use and benefit, and submitted that the rights of the parties to this action ought to be determined in the courts of Saxony. Kay, Justice, said:

"An important question of jurisdiction arises in this case. It is obvious that neither Charles Stewart Hawthorne nor the defendants is or are, with reference to this claim, by English law, in any fiduciary relation to the plaintiffs. They are not bound by contract with them. Nor is the claim in any way based upon a suggestion of fraud. It is a bona fide claim on both sides of title to land, or the proceeds of land, in Saxony. The claim depends primarily upon the law of Saxony as to the devolution of land in that country. If maintainable, it can only be so upon the ground that by the law of Saxony upon the death of Sarah Hawthorne three-fourths of one moiety of this property descended to Georgiana Hawthorne, under whom the plaintiffs claim. The next question is whether the plaintiffs, by the law of Saxony, are entitled to such interest, if any, as did so descend to Georgiana Hawthorne. A third question is whether by Saxon law, Charles Stewart Hawthorne, having sold the property, he or his estate after his death is accountable

for a share of the purchase money to the plaintiffs."

After discussing the uncertainty of determining a question purely of foreign law, the court said:

"I am not aware of any case where a contested claim depending upon the title to immovables in a foreign country, strictly so called, being no part of the British dominions or possessions, has been allowed to be litigated in this country simply because the plaintiff and defendant happened to be here. Lord Mansfield, in *Mostyn v. Fabrigos*, 1 Cowp., 161, 176, distinguished such a case from those in which actions might be brought here. He said: 'So if an action were brought relative to an estate in a foreign country, where the question was a matter of title, only, and not of damages, there might be a solid distinction of locality.' The cases cited in the argument were such as the enforcement in England of an equitable mortgage concerning Scotch land, where the court gave relief, treating the remedy as in the nature of specific performance, when the court acts in personam. *Ex parte Pollard*, 1 Mont & C., 239. There is no doubt of the jurisdiction in such a case and the courts will even foreclose an English mortgage of foreign land (*Toller v. Carteret*, 2 Vern., 494); the foreclosure decree being, as Vice Chancellor Bacon pointed out in *Paget v. Ede*, L. R., 18 Equity, 118, merely an extinction of the right to redeem, as was said also by Lord Cranworth in *Colyer v. Finch*, 5 H. L. Cas. 905, 915. In *Norris v. Chambers*, 29 Beav., 246, Lord Romilly distinguished the case of a foreign mortgage of foreign land where no relief would be given by English courts. There is a class of cases in which jurisdiction as to land in the colonies has been maintained on the ground of fraud, like *Lord Oranstown v. Johnston*, 3 Ves., 170. It is not pretended that there was any fraud in the present case. Perhaps the decision that goes furthest in the plaintiffs' favor is the recent case of *In re Ewing*, 22 Ch. Div., 456. There a legatee under a Scotch will or trust deed was allowed to maintain an action for administration against the executors who had proved in England, three of whom were in this country and the others had been served in Scotland, without objection. The usual administration order was made, though there were no assets in England; but the late Master of the Rolls and Lord Justice Cotton both pointed out that the plaintiff's claim was undisputed, and the master of the rolls repudiated the notion that Scotland is a foreign country for the purpose of such a question of jurisdiction. According to *Enohin v. Wylie*, 10 H. L. Cas., 1, if the claim had been contested, and had involved a disputed question of the construction of a Scotch will, it may be doubted if a decree could properly have been made. But the case is infinitely stronger where the contested claim is based upon the right to land where the land is situate, not in Scotland, but in Dresden, where the question whether the plaintiff has any claim or not, must be determined by the law of Saxony as to immovables, and where the only ground for instituting proceedings in this country is the fact that the defendants are residents here. All these circumstances concur in this case, and in my opinion the courts of

civil judicature in England, which sit, as Lord Westbury said in *Cookney v. Anderson*, 1 De Gex, J. & S., 385, to administer the municipal law of this country, have no authority to determine in such a case as this whether or not the plaintiff's claim is well founded, and I must therefore dismiss this action."

We have stated the facts of the case and quoted from the opinion at length, because it appears to us substantially to determine the question that is presented here. There is no allegation of contract, trust relation, or fraud on which the jurisdiction may be based. The essential question involved is whether the complainant Morton is the owner of the sand and gravel bar, either by virtue of a deed carrying his boundary to the middle line of Piscataway Creek in Maryland, or if not, by reason of its being a navigable stream, as an accretion to his adjacent shore land. The effect of the decree is to establish his title by a perpetual injunction against the acts of trespass complained of; and this question of title is determinable by the laws of Maryland alone.

We will not extend an opinion already too long by reviewing the several State cases cited on behalf of the appellants. It is sufficient to say of many of these that they related to lands lying in different counties in the same State and depended in part, at least, upon local statutes defining the jurisdiction of the courts. Others which go very far in the direction contended for—*Schmalz v. York Mfg. Co.*, 204 Pa. St., 1; *Olad v. Paist*, 181 Pa. St., 148; *Jennings v. Beale*, 151 Pa. St., 253; *Alexander v. Tolleston Club*, 110 Ill., 65, 77; *Carroll v. Lee*, 3 G. & J., 504, 510, being the principal ones—involve the construction and enforcement of contracts or a trust. *Keyser v. Rice*, 47 Md., 203, maintains the right of the courts of equity of the State to enjoin one of its citizens from prosecuting a suit in another State violative of the laws of Maryland, and affecting the rights of another citizen of the same State. The same doctrine is upheld by the Supreme Court of the United States, but stands upon a ground very different from that of the present case. *Cole v. Cunningham*, 133 U. S., 107. In another case cited, the same principle is applied, though to a different state of facts. *Great Falls Mfg. Co. v. Worster*, 23 N. H., 462. Complainant maintained a dam extending across the Samon River from the shore in New Hampshire to the shore in the State of Maine. The defendant, a citizen of New Hampshire and served with process therein, owned lands on each side of the river that were overflowed by reason of complainant's dam. He removed a portion of the dam and threatened to lower it further. The bill prayed that he might be enjoined from destroying any part of the dam or from meddling with it in any way. An objection to the jurisdiction was overruled and the decree granting the injunction was affirmed. In the discussion of the question it was said: "The court are not asked to assume any jurisdiction or exercise any control over the land in Maine, or to interfere with the laws of that State. Nothing more is asked than that the respondent, a citizen of New Hampshire and residing within her limits, shall be subject to her laws; and that, being within reach of the process of this court, he shall be forbidden to go elsewhere and

commit injury to property of other citizens situated here and entitled to the protection of our laws."

Entertaining the opinion that the court below was without jurisdiction of the subject-matter of the suit, we must reverse the decree appealed from and remand the cause with direction to dismiss the bill. It is so ordered.

Reversed and dismissed.

On a motion by the appellees to reform the decree of this court in the matter of costs, Mr. Chief Justice Shepard delivered the opinion of the Court:

The opinion of the court in reversing this case, is silent in respect to the question of costs, and the entry of the decree therefor against the appellees was in accordance with the general provision of Section 3 of Rule 18. The appellees have filed a motion to reform that decree so as to show a reversal without costs to either party. The contention that there should have been no decree for costs, as against either party, because the dismissal of the appeal was for want of jurisdiction in the court below, as governed by Section 1 of Rule 18, is untenable. That section applies in those cases where the appellate court has no jurisdiction whatever. When the appeal is from a decree rendered by a trial court, without jurisdiction in the premises, the rule is different. In such a case the appellate court has jurisdiction of the appeal for the purpose of reversing the erroneous judgment. *Mansfield, etc., R. Co. v. Swann*, 111 U. S., 279, 287; *Hancock v. Holbrook*, 112 U. S., 229, 232; *Graves v. Corbin*, 132 U. S., 571, 590; *N. A. Trans. Co. v. Morrison*, 178 U. S., 262, 269.

The entry of the decree was, therefore, clearly within the power of this court under Section 3 Rule 18. That section of the rule provides that in case of reversal costs shall be awarded to the appellants "unless otherwise ordered by this court. The complainants were undoubtedly at fault in bringing the suit in a court without jurisdiction. The defendants, appellants here, tacitly conceded the jurisdiction of the court below, and were apparently as anxious, on account of convenience, to have the case tried therein on its merits as were the complainants. They made no suggestion of want of jurisdiction at any stage of the proceeding and the point naturally passed unnoticed by that court. From the decree against them on the merits they appealed to this court, and again failed to suggest the want of jurisdiction. On this appeal, when the argument was begun on the merits, the court of its own motion suggested the probable want of jurisdiction in the court below, and refused to hear the argument until that question could be determined. The result of the suggestion was, the conclusion that the court below had no jurisdiction of the case, and that necessarily its decree must be reversed with direction to dismiss the bill. Now, had the appellants raised the question of jurisdiction below and brought it up as a ground of appeal, there would be no question of their right to recover costs in this court. We must presume, however, that had the suggestion of want of jurisdiction been made in the court below, it would have prevailed. The result of the failure to raise the

question of jurisdiction has been the taking of testimony at considerable expense and a great increase in the volume of the transcript of the record. As the appellants were at fault in the respects indicated, and brought the case here upon the merits alone, we now think it just that each party shall pay the costs incurred by him. Having the power, under section 3 aforesaid, to make such an order, the decree will be reformed so as to require each party to pay the costs incurred by him in this court. It is so ordered.

**TOLEDO COMPUTING SCALE COMPANY,  
A CORPORATION, APPELLANT,**

**v.**

**BUSHROD T. GARRISON.**

**CONTRACTS; FRAUD; MISREPRESENTATION.**

The mere fact that a contract presented for signature to one who is able to read and understand it fully, and who is not prevented from reading it by some artifice of the other party, is represented to amount to nothing more than a receipt, is not sufficient to avoid it on the ground of fraud.

No. 1690. Decided November 7, 1906.

**APPEAL** by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 48,096, entered upon the verdict of a jury in a case appealed from a justice of the peace. **Reversed.**

*Mr. H. W. Wheatley* for the appellant.

*Mr. C. F. Diggs* for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This action was begun in the Justice Court by the Toledo Computing Scale Company to recover of Bushrod T. Garrison \$60, being the purchase price of scales sold to him April 27, 1905. Judgment was rendered for the plaintiff, but on appeal to the Supreme Court of the District and trial de novo judgment was entered in favor of defendant, from which this appeal has been prosecuted. It appears from the bill of exceptions that plaintiff's agent contracted to sell the scales to the defendant at the price of \$65, and there was offered in evidence a written order for the same executed by the defendant. The paper is a printed form with blanks, some of which were filled in writing by plaintiff's agent. In the upper left-hand corner appear the words in plain print: "Notice: No scales placed on trial." Then follow in very large type the words: "Order Form for Scales." The date in writing is: "Washington, D. C., April 27, 1905." It is addressed to the plaintiff requesting it to ship to the defendant one No. 22 scales, in consideration of which he promises to pay \$65, being the price of the scales f. o. b. Toledo, Ohio. Terms, \$10 on delivery; balance, \$5.50 per month; allow \$5 for E. B. scale. Certain printed conditions follow which are unimportant in the litigation, save that upon failure to pay instalment the entire price shall become due. It concludes with the printed words: "This contract covers all agreements between the parties hereto."

Defendant admitted that no payments had been made on account of the order, and that the scales had been delivered and were then in his possession.

Defendant then testified in his own behalf in substance as follows:

"That in April, 1905, he received a number of calls from one J. D. Lasley, who represented himself to be the agent of the plaintiff who importuned him to purchase a set of scales from the plaintiff. That Lasley called several times, and defendant declined to buy the scales. That on April 27, 1905, Lasley called upon him, when he was very busy and tried to sell him a set of scales. The defendant told Lasley he did not wish to purchase them; whereupon Lasley stated that he would leave the scales with the defendant for thirty days' trial, and that if at the expiration of that time, the scales were found to be satisfactory, the defendant could purchase them; if they were not satisfactory, he could remove them, whereupon the defendant agreed to this proposition. Then Lasley drew a paper from his pocket, the same being the contract hereinbefore described, which said paper was folded in the center, the crease being under words *dollars* (less 5 per cent being full cash settlement), which paper Lasley requested the defendant to sign; and upon defendant asking him what the paper was, he replied that it was a receipt showing the receipt of the scales. That he, the defendant, did not examine the paper except that he noticed there were some blank spaces, none of which were filled in; and that he did not see any part of the paper above the line where the same was creased. That he had no idea that he was signing a contract for the sale of the scales. That it was agreed that in the event that the defendant should purchase the scales, he was to pay 65 dollars for same, 10 dollars first payment, and balance five dollars fifty cents a month, and was to receive a credit of five dollars for return of old pair of scales. That, at the expiration of the 30 days, the scales not being satisfactory, he notified Lasley to remove the same, which was not done. That the scales are now in his possession, subject to the order of the plaintiff."

**Cross-examination:**

"Witness could read and write the English language, had been the proprietor of a grocery store in the city of Washington for several years prior to the signing of the paper; no fiduciary, or other relations of confidence of trust existed between Lasley or plaintiff and witness. Witness examined contract sufficiently to see that blanks below crease on paper were not filled in; that he did not think he was signing a different piece of paper, in the physical sense, than the one in question. That the scales are still in his possession, and his reason for signing the paper at the time he did, was because he was in a hurry, and it was represented to Lasley to be a receipt."

The plaintiff moved the court to instruct the jury to return a verdict in its favor, on the ground that the evidence of defendant made out no sufficient defense. This was overruled.

The amount in controversy is small, but the principle involved in its determination is an important one. After full consideration we are of the opinion that the court erred in not instructing the jury to find for the plaintiff.

In his testimony, the defendant did not pretend that the execution of the contract or order was obtained upon the condition that it was not



to take effect until the occurrence or performance of a precedent, independent condition, as was the case in *Uhfelder v. Donaldson*, 21 App. D. C., 489, 493: 31 Wash. Law Rep., 428.

Nor does his testimony present the case of a separate oral agreement concerning a matter about which the contract is silent, and that is not inconsistent with its express terms; and where, also, there are circumstances from which it may fairly be inferred that the instrument executed was not intended to be complete and final statement of the whole transaction and agreement between the parties. See *Purity Ice Co. v. Hawley*, 22 App. D. C., 573, 592-3: 31 Wash. Law Rep., 742, where the question is considered though not expressly decided.

In this consideration, it is proper to remark, that we attach no importance to the printed indorsement of notice that, "No scales are placed on trial," for it is not made one of the stipulations of the order that was executed. Under some circumstances, such an indorsement might possibly have some weight as tending to show notice of limitation of the powers of the selling agent; but no such question arises here. The practice of attempting to incorporate conditions in a contract by indorsement of same upon the back of any other part thereof, is one not to be encouraged; and there seems to be no greater reason for holding a party bound by such indorsement, on a contract of this nature, unless observed and assented to by him, than in the case of a carrier's contract for transportation. *Boering v. Railway Co.*, 20 App. D. C., 509, 510; S. O. 193 U. S., 442, 449: 30 Wash. Law Rep., 742. This point, however, is not directly involved.

The defendant's evidence does not tend to show that there was any actual mistake in fact in the terms of the contract, or fraud in procuring his signature. While he said that the blanks in the paper had not been filled at the time of its execution with the writing now shown therein, yet the written words are in complete accord with his own statement of the terms of payment, namely, that the purchase price was \$65; that \$10 were payable on delivery, and the remainder at the rate of \$5.50 per month, and that his old scales were taken in part payment at the price of \$5, thereby reducing the first payment one-half. Moreover, these terms are inconsistent with the condition that he seeks now to incorporate into the contract, namely, that he was to take the scales on trial for thirty days, with the privilege of return if not satisfactory. By that condition he would be relieved of the express promise to pay \$10 upon the delivery of the scales.

The single fact of imposition upon which he relies is that the plaintiff's agent represented the order to be a receipt. It appears, nevertheless, that the paper, containing the general terms of the sale which he admits, was presented to him for signature; that he was able to read it, and there was nothing done to prevent his doing so. His only excuse for not reading it is that he was in a hurry at the time. The mere fact that a contract, presented for signature to one who is able to read and understand it fully, and who is not prevented from reading it by some artifice of the other party, is represented to amount to nothing more than a simple receipt, is not sufficient to avoid it on

the ground of fraud. Something more is required to warrant such a finding. *O. & O. Ry. Co. v. Howard*, 14 App. D. C., 262, 294; S. O. 178 U. S., 153, 167: 27 Wash. Law Rep., 146.

As was said in *Upton v. Tribilcock*, 91 U. S., 45, 60, "It will not do for a man to enter into a contract, and, when called upon to respond to its obligations, to say that he did not read it when he signed it, or did not know what it contained. If this were permitted contracts would not be worth the paper on which they are written. But such is not the law. A contractor must stand by the words of his contract; and, if he will not read what he signs, he alone is responsible for his omission."

In a recent case in this court where the attempt was made to escape the obligation of a contract on the ground that it was represented to be something different from what it was, it was said by Mr. Justice Morris: "But the paper was open to the appellant for examination; and if he signed it, as he says he did, without due examination, he has only himself to blame for his neglect to exercise care in the premises." *Whiting v. Davidge*, 23 App. D. C., 156, 165: 32 Wash. Law Rep., 114.

For the reasons given, the judgment must be reversed with costs, and the cause remanded for another trial in accordance with this opinion. Reversed.

**Bills and Notes.**—A waiver by an accommodation indorser of a demand and notice of protest, with full knowledge that demand had not been made or notice of protest given, is held binding, in *Burgettstown National Bank v. Nill* (Pa.), 3 L. R. A. (N. S.), 1079, although not based on a new consideration.

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### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

**Stockholders' Meeting (Annual).**

OFFICE OF PUEBLO MINING COMPANY,  
Rooms 710-711 Colorado Building,  
WASHINGTON, D. C., November 27, 1906.

To the Stockholders of the Pueblo Mining Company:

Please take notice that the annual meeting of the stockholders of the Pueblo Mining Company will be held at the principal office of the company, in the city of Washington, D. C., on Tuesday, the 8th day of January, 1907, at 12 o'clock noon, for the purpose of electing nine trustees, and for the transaction of such other business as may properly come before the meeting. The stock transfer books of the company will be closed on Saturday, the 29th day of December, 1906, at 3 o'clock P. M., and will remain closed until Wednesday, the 9th day of January, 1907, at 10 o'clock A. M.

[Seal]  
48-St.

JNO. T. MCCOY,  
Secretary.

**Legal Notices.****FIRST INSERTION.**

W. Russell Graham and Herbert A. Wrenn,  
Attorneys

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of James Storey, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 30th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 30th day of November, 1906. JAMES STOREY, 1518 Half St. S. W.; MARY JOHNSON, 1027 N. J. ave. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,363. Administration. [Seal] 49-St

Thomas Walker, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Mary Ann Orrid, Deceased.

No. 13,919. Administration Docket —

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by William D. Jarvis, it is ordered, this 7th day of December, A. D. 1906, that Charles Orrid, of Cleveland, Ohio, and George Orrid, Henry Orrid, Harrison Orrid, Anna Evans and Martha Barnes, of Hemstead Post-Office, King George County, Va., and all others concerned, appear in said court on Monday, the 7th day of January, A. D. 1907, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 49-St

Edwin Forrest and Chas. Bendheim, Attorneys  
In the Supreme Court of the District of Columbia,  
Holding a Special Term of Probate Business.  
In the Matter of the Estate of J. W. Pumphrey, Deceased. No. 13,615.

Application having been made herein for the probate and admission to record of the paper writing dated the 16th day of October, 1887, and purporting to be the last will and testament of the late James W. Pumphrey, by Beulah Simkins, the person named as executrix therein, and for letters of administration on said estate, with the will annexed, and citation having been returned by the marshal, not to be found, as to each and all of them, it is, this 6th day of December, 1906, ordered that George Tucker, Howard Tucker, James Tucker, and William Tucker, Beattie Nebinger, Susie Nebinger, Alexander Nebinger, and Percy Thomas, and all others interested or concerned, appear in said court on Tuesday, the 15th day of January, 1907, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice be published in The Washington Law Reporter and The Evening Star, a newspaper of general circulation in said District, once in each of three successive weeks before said 15th day of January, 1907, the first publication hereof to be made not less than thirty days before said January 15th, 1907. By the Court:

[Seal] ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 49-St

**Legal Notices.**

Geo. Francis Williams, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Robert M. Lockwood, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 21st day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of December, 1906. FANNIE H. LOCKWOOD, 2020 L. st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,783. Administration. [Seal.] 49-St

John B. Larnar, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Susannah A. Chapman, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of December, 1906. THE WASHINGTON LOAN AND TRUST COMPANY, by Frederick Eichelberger, Trust Officer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,600. Administration. [Seal.] 49-St

John B. Larnar, Attorney.

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Julia N. Rowzee, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of December, 1906. THE WASHINGTON LOAN AND TRUST COMPANY, by Frederick Eichelberger, Trust Officer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,977. Administration. [Seal.] 49-St

George E. Flemming, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Henry C. Burch, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of December, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of December, 1906. UNION TRUST COMPANY, by George E. Flemming, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,068. Administration. [Seal.] 49-St

Wolf & Cohen, Attorneys

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Selmar W. A. Grimm, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same with the vouchers thereof, legally authenticated, to the subscriber on or before the 28th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of December, 1906. GUSTAVE DITTMAR, 702 9th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,060. Administration. [Seal.] 49-St

**Legal Notices.****Geo. F. Havell, Attorney**

**In the Supreme Court of the District of Columbia.**  
**Ida Walling v. Charles P. Walling and Della Walsh.**  
 Equity, No. 25,965.

The object of this suit is to obtain an absolute divorce on the ground of adultery. On motion of the complainant, it is, this 28th day of November, 1906, ordered that the defendants, Charles P. Walling and Della Walsh, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Times before said day. HARRY M. CLA-  
 BAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 49-31

**Brandenburg & Brandenburg, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John C. Dougherty, late of the State of Louisiana, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of December, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8d day of December, 1906. MARY E. DOUGHERTY, care of F. W. Brandenburg, Fendall Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,044. Administration. [Seal]. 49-31

**Baker, Sheehy & Hogan, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Margaret Shanahan, Deceased.**  
 No. 14,024. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Joseph C. Sheehy, it is ordered, this 3d day of December, A. D. 1906, that Thomas J. Daly, Edward Raedy, Mary Coon, Johanna Reese, Catherine Walsh, Mary Horan, Thomas Walsh, Mary Murphy, Johanna Flynn, Patrick Walsh, son of Richard Walsh (deceased), Patrick Walsh, son of Thomas Walsh (deceased), Mary Welch, Edward Walsh, and John Egan, and all others concerned, appear in said court on Monday, the 7th day of January, A. D. 1907, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty [Seal] days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 49-31

**Wilson & Barksdale and Jas. K. Folk, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**In re Estate of Martha Williams, Deceased.**  
 No. 14,026.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, with a paper writing dated November 8, 1906, purporting to be a will annexed by Mary Hutchinson, it is ordered, this 3d day of December, A. D. 1906, that notice be and hereby is given to the unknown next of kin and heirs at law of Martha Williams, deceased, and to all others concerned, to appear in said court on Monday, the 7th day of January, A. D. 1907, at 10 o'clock A. M., to show cause why said paper writing should not be admitted to probate and record, and why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be [Seal] not less than thirty days before said return day. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 49-31

**Legal Notices.****Geo. F. Collins, Solicitor**

**In the Supreme Court of the District of Columbia.**  
**In Re Lawson Council, No. 297, Independent Order of St. Luke, a Corporation.** Equity, No. 26,700.

Upon consideration of the petition of Lawson Council, No. 297, Independent Order of St. Luke, a corporation, asking for a dissolution of its corporate existence, it is this 20th day of November, A. D. 1906, ordered and adjudged that all persons interested in said corporation appear and show cause on or before the 24th day of December, A. D. 1906, if any they have, why said corporation should not be dissolved as prayed. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star before said day. By the Court: ASHLEY M. GOULD, Chief Justice. True copy. Test: J. R. Young, Clerk, by R. P. Belew. 49-31

**Hamilton, Colbert & Hamilton, Attorneys**  
**In the Supreme Court of the District of Columbia.**  
**Southern Disney Shade Fixture Company v. Disney**  
**Shade Co.** Equity No. 25,965.

The trustee appointed in the above entitled cause, John J. Hamilton, having reported the sale to Henry E. Kondrup of the letters patent numbered 780241, dated June 9, 1906, issued to William Disney for improvement in shade hangers known as the Disney Bail-bearing Adjustable Window Shade Hangers, together with all rights thereunder, except the right to exploit the sale of said hanger in the District of Columbia, and the States of Virginia, Georgia, and Alabama, for the sum of \$350 cash, it is by the court, this 4th day of December, 1906, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 24th day of December, 1906. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said [Seal] last mentioned day. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 49-31

**Irwin B. Linton, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of William O. Denison, Deceased.**  
 No. 14,068. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Georgia B. Denison, it is ordered, this 4th day of December, A. D. 1906, that Helen Paddock, Clara Sheffield, Benjamin Denison, Edward Denison, George Denison, William J. Denison, and Alida Roberts, and all others concerned, appear in said court on Monday, the 7th day of January, A. D. 1907, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty [Seal] days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 49-31

**John B. Larner, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Susan W. Fowler, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of December, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3d day of December, 1906. PHILIP F. LARNER, 918 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,962. Administration. [Seal]. 49-31

New corporations can procure from the Law Reporter Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated, numbered, and bound.

**Legal Notices.****SECOND INSERTION.**

**John Paul Earnest, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters of administration on the estate of Julia Fisher Campbell, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 24th day of December, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 27th day of November, 1906. JOSEPH A. MCKELLIP, by John Paul Earnest, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,— Admn. [Seal.] 48-8t

**Joseph H. Stewart, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Henrietta Baker, Deceased.**  
**No. 13,987. Administration Docket—.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Mary Williams, it is ordered, this 28th day of November, A. D. 1906, that Cora Baker, Beulah Baker, Henry Baker, and James Baker, and all others concerned, appear in said court on Monday, the 31st day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Record once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice.

Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 48-8t

**James T. Hunter, Attorney**  
**Supreme Court of the District of Columbia.**  
**Holding Probate Court.**

**Estate of Simeon T. Neal.**  
**No. 13,971. Administration Docket—.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Fernelia L. Dodd, it is ordered, this 28th day of November, A. D. 1906, that Robena U. Neal, and all others concerned, appear in said court on Monday, the 31st day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice.

Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 48-8t

**John B. Larner, Charles S. Hayden, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Jennie De Witt Talmage, Deceased.**  
**No. 14,015. Administration Docket—.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Ernest H. Pillsbury, the executor named therein, said will bearing date December 24, 1902, it is ordered, this 27th day of November, A. D. 1906, that Jessie Talmage Smith, May Mangam, Edith Dougan, Maude Talmage Wyckoff, and Frank De Witt Talmage, all of full age, and all others concerned, appear in said court on Monday, the 31st day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter, Washington Herald, and Washington Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice.

Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 48-8t

**Legal Notices.**

**Alex. G. Bentley, Attorney.**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Armilda McGrew, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the 23d day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of November, 1906. EDWARD A. BALLOCH, 1013 15th st., N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,042. Administration. [Seal.] 48-8t

**Douglas & Douglas, Wm. B. Matthews, Jr., Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Ellen Zora Bosworth, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of November, 1906. MARY M. ANTIONETTE SHAW, 8216 Prospect ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,027. Admn. [Seal.] 48-8t

**Wilton J. Lambert, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Rocco Brignole, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of November, 1906. LOUISE BRIGNOLE, 1415 You st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,885. Administration. [Seal.] 48-8t

**R. H. McNeill, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Mary E. Smith, Plaintiff, v. William Henry Smith and**  
**Adele Blackwell, Defendants.**  
**Equity, No. 26,801.**

The object of this suit is to obtain an absolute divorce from the defendant, William Henry Smith, because of his adultery with defendant Adele Blackwell. On motion of the plaintiff it is, this 20th day of November, 1906, ordered that the defendant, Adele Blackwell, cause her appearance to be entered herein, on or before the fortieth (40) day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order shall be published once a week for three successive weeks in The Washington Law Reporter and The Washington Times, before said date. ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by R. P. Belew. 48-8t

**Julius I. Peyser, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscribers, who were by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Herman Baumgarten, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 24th day of December, 1906, at 10 o'clock A. M., as the time, and said court room as the place for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 26th day of November, 1906. ADA BAUMGARTEN, ARTHUR BAUMGARTEN, by Julius I. Peyser, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,977. Administration. [Seal.] 48-8t

**Legal Notices****Malcolm Hufty, Solicitor**

In the Supreme Court of the District of Columbia.  
**Francis E. Smith, Complainant, v. Louis H. Meyers et al., Defendants.** Equity, No. 26,380.

The object of this suit is to establish a mechanic's lien and for sale of the property described in these proceedings. On motion of the complainant, by Malcolm Hufty, his solicitor, it is, this 27th day of November, 1906, ordered that the defendant, **Fount Le Roy Elevator Company**, a corporation, cause its appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day.

[Seal] **HARRY M. CLABAUGH, Chief Justice.** A true copy. Test: **J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk.** 48-31

**Barnard & Johnson, Attorneys**  
 Supreme Court of the District of Columbia.  
 Holding Probate Court.

**Estate of Joannes Rochon, Deceased.**  
 No. 18,998. Administration Docket, 35.

Application having been made herein for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by Marie Wagner Rochon, it is ordered, this 23d day of November, A. D. 1906, that **Blanche Rochon and Marie Rochon**, and all others concerned, appear in said court on Wednesday, the 26th day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication

[Seal] day hereinafter mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD, Justice.** Attest: **James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court.** 48-31

**Barnard & Johnson, Solicitors for Complainant**  
**T. Percy Myers and Gittings & Chamberlin, Solicitors for Defendants**

In the Supreme Court of the District of Columbia.  
**Ernest L. Schmidt, Complainant, v. Ada G. Earhart Ross et al., Defendants.** In Equity, No. 25,523.

**ORDER NISI.**

**Ralph P. Barnard, Justin Morrill Chamberlin, and T. Percy Myers**, trustees herein, having reported the sale of the following lots in **Ferdinand Bulter's** subdivision of lots in square 226 as per plat recorded in book K. L. H., at folio 146, one of the records of the surveyor's office of the District of Columbia, to wit: Lots 17 and 18 to **Edwin H. Neumeier** and **Randolph T. Warwick** for the sum of \$9.50 per square foot, there being according to said plat 2,100 square feet contained in said property, making the total purchase price \$19,950; lot 20 to **Washington Nallor** for the sum of \$6.00 per square foot, there being according to said plat 1,800 square feet contained in said property, making the total purchase price \$7,800; and lot 21 to **Andrew B. Graham** for the sum of \$6.30 per square foot, there being according to said plat 1,805 square feet contained in said property, making the total purchase price \$11,371.50, it is, this 28th day of November, A. D. 1906, by the court, ordered, that the said sales be finally ratified and confirmed, unless good cause to the contrary be shown on or before the 29th day of December, A. D. 1906. Provided that a copy of this order be published in The Washington Herald and The Washington Law Reporter once a week for three successive

[Seal] weeks before the aforesaid day. **ASHLEY M. GOULD, Justice.** True copy. Test: **J. R. Young, Clerk, by R. P. Belew.** 48-31

**Robert S. Hume, Attorney**  
 Supreme Court of the District of Columbia.  
 Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Walton Goodwin**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of August, 1906. **BETTIE WATKE GOODWIN**, 1518 P st. Attest: **WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 13,828. Administration. [Seal.] 48-31

**Legal Notices.**

**J. Wilmer Latimer, Attorney**  
 Supreme Court of the District of Columbia.  
 Holding Probate Court.

**Estate of Vernon C. Tanker, Deceased.**  
 No. 14,018. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. l. a. to be issued to **Abner Y. Leech, Jr.**, on said estate by **Evelyn Hanna**, it is ordered this 26th day of November, A. D. 1906, that **Hiram P. Tanker**, and all others concerned, appear in said court on Monday, the 31st day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return

[Seal] day. **ASHLEY M. GOULD, Justice.** Attest: **James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court.** 48-31

**Robinson White, Attorney**  
 In re Estate Charles White, Deceased.  
 Administration Docket. No. 13,271.

**ORDER OF COURT.**

The above-entitled cause coming on to be heard on motion of counsel for the executor to ratify the sale of sublot numbered forty-six (46) in square numbered one hundred and seventeen (117) and sublot numbered seventeen (17) in square numbered three hundred and seven (307) in Washington, District of Columbia, as shown in report of such sale filed in this cause, and the motion considered and counsel heard, and the report of the sale as made by the said executor, being duly considered, it is this 26th day of November, 1906, ordered, adjudged, and decreed that the sale by the said executor of the said sublot numbered forty-six (46) in square numbered one hundred and seventeen (117) to **James Kerr**, and the sale of the said sublot numbered seventeen (17) in square numbered three hundred and seven (307) to **Clifford A. Borden** be ratified by the court, unless cause to the contrary be shown on or before the 26th day of December, 1906. Provided that a copy of this order be published in The Washington Law Reporter once a week for three successive weeks prior

[Seal] to the said 26th day of December, 1906. **ASHLEY M. GOULD, Justice.** A true copy. Attest: **James Tanner, Register of Wills.** 48-31

**THIRD INSERTION.**

**H. B. Moulton and J. H. Lichliter, Attorneys**  
 Supreme Court of the District of Columbia.  
 Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of **George A. Bartlett**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscribers, on or before the 15th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 15th day of October, 1906. **HOSEA H. MOULTON**, Washington Loan and Trust Building; **JACOB H. LICHLITER**, 416 5th st. N. W. Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 13,560. Administration. [Seal.] 47-31

**R. Preston Shealey, Attorney**  
 Supreme Court of the District of Columbia.  
 Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Hannah H. Hendrickson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of November, 1906. **RICHARD HENDRICKSON**, 921 1/2 La. ave. N. W. Attest: **WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 14,089. Admn. [Seal.] 47-31

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street N. W.

**Legal Notices.**

**Coldren & Fenning, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Michael Murphy, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of November, 1906. FREDERICK A. FENNING, Century Bldg. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,040. Administration. [Seal.] 47-3t

**Geo. E. Sullivan, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia and the State of Maryland, respectively, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of David H. Hazen, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscribers, on or before the 19th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hands this 19th day of November, 1906. HENRY H. HAZEN, 1030 McCulloch st., Balto., Md.; EMMA L. HAZEN, 407 Sixth st., S. W. Wash., D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,032. Administration. [Seal.] 47-3t

**W. Gwynn Gardiner, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Jane E. Kichham, Deceased.**  
**No. 13,840. Administration Docket—**

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by W. Gwynn Gardiner, it is ordered this 20th day of November, A. D. 1906, that Edward F. Cashell, and all others concerned, appear in said court on Monday, the 24th day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 47-3t

**Sidney T. Thomas, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Selma B. Sharretta, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of November, 1906. SIDNEY T. THOMAS, 452 D st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,994. Administration. [Seal.] 47-3t

**T. B. Warrick, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Ida Johnson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3rd day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of November, 1906. THOS. B. WARRICK, 411 6th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,948. Administration. [Seal.] 47-3t

**Legal Notices.**

**John E. Laskey and Ralph Given, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**In re Estate of George Hickenlooper, Deceased.**  
**No. 13,899.**

It appearing to the court that the citation issued herein to Lillie M. Davidson and Annie L. Hefner upon the petition of Frank A. Sebring and Harry L. Rust for the admission to probate of the last will and testament of said George Hickenlooper, deceased, has been returned "not to be found," the said Lillie M. Davidson and Annie L. Hefner are hereby notified of the said application for such probate, and it is this 20th day of November, A. D. 1906, ordered that the said Lillie M. Davidson and Annie L. Hefner cause their appearance to be entered here in on or before the thirtieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the matter will be proceeded with as in case of default. Provided a copy of this notice be published once in each of three successive weeks in The Washington Law Reporter and The Washington Herald. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 47-3t

**Barnard & Johnson Attorneys**

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Abigail Vance Sprague, Deceased.**  
**No. 14,014. Administration Docket—**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Robert W. Taylor and J. Alexander Vance, it is ordered, this 22d day of November, A. D. 1906, that Frank W. Vance, and all others concerned, appear in said court on Monday, the 24th day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] return day. ASHLEY M. GOULD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 47-3t

**R. Preston Shealey, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of John Connell, Deceased.**  
**No. 13,993. Administration Docket—**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate by Mary E. Connell, it is ordered, this 16th day of November, A. D. 1906, that Mary Shaughnessy, of Ballabricken, County Limerick, Ireland, and all others concerned, appear in said court on Friday, the 28th day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 47-3t

**P. H. Marshall, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Mary D. Bradford, Deceased.**  
**No. 13,991. Administration Docket 35.**

Application having been made herein for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by John C. Edwards and Albion K. Parris, it is ordered, this 16th day of November, A. D. 1906, that Kathryn V. Kennedy (minor) and Frank Kennedy (custodian of said minor), and all others concerned, appear in said court on Thursday, the 3rd day of January, A. D. 1907, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] return day ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 47-3t



**Legal Notices.**

**Geo. Francis Williams, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Sarah A. Van Derlip, Deceased. No. 14,007.**  
 Administration Docket 38.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Burr N. Edwards, it is ordered, this 23d day of November, A. D. 1906, that Charles Arnold Phipps and Lucian Holbrook, and all others concerned, appear in said court on Wednesday, the 26th day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return

[Seal] day. **ASHLEY M. GOULD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 47-St

**W. C. Sullivan, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of George W. Bates, Deceased.**  
 No. 13,942, Administration Docket—.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Joseph Stewart, it is ordered this 22d day of November, A. D. 1906, that Mary Newlin, and all others concerned, appear in said court on Monday, the 31st day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD, Justice.**

Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 47-St

**C. W. Darr, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Mary Molloy v. Ellen O'Brien et al.**  
 Equity No. 26,188.

Charles W. Darr, Richard A. Curtin, and John J. Brosnan, trustees herein, having reported the sales of part of lot sixteen (16), in square 449, being improved by premises No. 13 and 616 Goat Alley northwest, to Joseph Levazo, for the sum of eight hundred and ten (\$810.00) dollars, lot number seventeen (17), in W. W. Corcoran's subdivision of square 509, improved by premises known as No. 425 "Q" st. northwest, to Clifford A. Borden for the sum of twenty-nine hundred (\$2,900.00) dollars, and the north one-half of lot numbered thirty-nine (39), in Wright and Cox's subdivision of Mount Pleasant and Pleasant Plains, being improved by premises known as No. 2222 Ninth street northwest, to John M. Mahaney, for the sum of nine hundred and seventy-five (\$975.00) dollars, it is by the court, this 18th day of November, A. D. 1906, ordered that said trustees be, and they are hereby, authorized to accept said offers, and, upon compliance with the terms of said sale, said sale shall stand confirmed, unless cause to the contrary be shown on or before the 26th day of December, A. D. 1906. Provided a copy of this order be published in The Washington Law Reporter and The Washington Herald once a week for three successive weeks before the last mentioned date. By the Court: **HARRY M. CLA-BAUGH, Chief Justice.** A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 47-St

**FOURTH INSERTION.**

[Filed November 15, 1906. J. R. Young, Clerk.]

**W. H. Linkins, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**

**Benina M. Glover, Complainant, v. John J. Leroy et al., Defendants. In Equity. No. 26,291.**

The object of this suit is to declare the title of the complainant to part of original lot numbered eight (8), in square numbered eighty (80), in the city of Washington, District of Columbia, beginning for the same at the northwest corner of said lot and running thence south along the line of Twenty-second street, twenty-eight (28) feet; thence east sixty-two (62) feet two (2) inches, to the easterly line thereof; thence north twenty-eight (28) feet; and thence west sixty-two (62) feet two (2) inches,

**Legal Notices.**

to the place of beginning, to be good of record in her in fee simple by reason of the adverse possession. On motion of the complainant, by her solicitor, William H. Linkins, it is, by the court, this 15th day of November, 1906, ordered that the defendants, John J. Leroy, Jacob Moyer, Jacob Myer, Bernard Gilpin, Thomas J. Lowery, and Thomas Weatherall, or Thomas Weatherall, and John Barcroft, executors, and John Little, George W. Harkness, trustee, Forrester Young, Sarah Motters, and Thomas Weaver, and their or either of their unknown heirs, devisees, grantees, or assignees, either immediate or mediate, or the heirs of such person, or as claiming under, by or through either of said parties, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise will be proceeded with as in case of default. Provided this order shall be published once a week for four successive weeks in The Washington Law Reporter and The Evening Star, before said return day, two of which publications shall be the last two weeks in November, 1906, it appearing to the Court, upon good cause shown, based upon the affidavit filed herein, that further publication in this cause is unnecessary. [Seal] **ASHLEY M. GOULD, Justice.** A true copy. Test: J. R. Young, Clerk, by F. L. Cunningham, Asst. Clerk. 46-4

**SIXTH INSERTION.**

[Filed November 1, 1906.]

**A. Leftwich Sinclair, Attorney**

**In the Supreme Court of the District of Columbia.**  
**Holding a Special Term as a District Court of the United States for the District of Columbia.**

**In the Matter of the Payment of Damages Resulting to Adjacent Property From Changes in the Grades of Streets, Avenues, and Alleys Authorized by the Act of Congress Approved February 28, 1903, Relating to the Construction of a Union Railroad Station in the District of Columbia.**  
 District Court No. 671.

Notice is hereby given that we, the undersigned, having been designated and appointed by the Supreme Court of the District of Columbia, holding a special term as a United States District Court for the District of Columbia, as a commission to appraise the damages resulting to adjacent property from changes in the grades of streets, avenues, and alleys authorized by the act of Congress approved February 28, 1903, relating to the construction of a union railroad station in the District of Columbia, will meet at 10 30 o'clock A. M., on Wednesday, the 12th day of December, A. D. 1906, at the United States Court House (City Hall), in the District of Columbia, in a room to be assigned us by the United States Marshal for said District, for the purpose of viewing the property affected by the changes of the grades of the following named streets, avenues, and alleys, and hearing testimony touching the damages resulting to real property from said changes of grade, in accordance with the terms and provisions of the act of Congress approved April 22, 1904, entitled "An act to provide for payment of damages on account of changes due to construction of the Union Station, District of Columbia," to wit: Second street northeast, Third street northeast, and K street northeast, around square numbered seven hundred and fifty (750), and the alleys and minor street (Parker street) in said square; Delaware avenue and Second street northeast, around square numbered seven hundred and forty-eight (748); and Third street northeast, between L and M streets. All owners of real property damaged by the changes in the grades of said streets, avenues, or alleys will file a petition with us, in this cause, signed and sworn to, for an allowance of damages within sixty (60) days after the said 12th day of December, A. D. 1906. The aforesaid act of Congress approved April 22, 1904, provides that upon the failure of any such owner to thus present his claim, within said period, his right to do so shall cease and determine. **CHARLES A. BAKER, GEORGE W. MOSS, GEORGE SPRANSY, Commission to Appraise Damages.** A true copy. Test: J. R. YOUNG, Clerk, by T. E. Cunningham, Asst. Clerk.

nov. 2, 9, 16, 23, 30; dec. 7.

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WASHINGTON, D. C. - - - DECEMBER, 14 1906

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### Mutual Insurance Companies; Rights of Policy-Holders in Surplus; Extended Insurance.

The recent decision of the Court of Appeals of Kentucky in the case of United States Life Insurance Co. v. Spinke, 96 S. W., 889, is of especial interest to policy-holders in insurance companies. The substance of the opinion is contained in the "syllabus by the court," which is as follows:

"The 'surplus' of a mutual life insurance company belongs equitably to the policy-holders who contributed to it in the proportion in which they contributed to it. Under sec. 88, chap. 690, p. 1869, Laws 1892, of New York, the share of a policy lapsed for non-payment of premium (after having been in force three years) must be applied to the purchase of extended insurance unless the policy-holder has elected to take paid-up insurance therefor.

"The words 'dividend additions' as used in the New York statute, refer to that part of the premiums charged which was 'loaded' onto the premium in excess of its share of expenses and losses sustained. Such additions, and the earnings thereon, which constitute the 'surplus,' must be valued and applied in buying extended insurance for lapsed policies in force three years or longer, in the same way that the 'reserve' of the policy is required to be valued and applied in purchasing such extended insurance.

"Insurance companies must keep accurate accounts with their policy-holders as classes, failing which, no presumption will be indulged in

the companies' favor when it comes to valuing and applying 'surplus' or 'dividend additions' to lapsing policies.

"It is not optional with the directorate of life insurance companies not purely stock companies whether they will declare dividends, or to what extent, of the so-called surplus."

### Railroad Crossing; Concurring Negligence of Railroad Company and Driver of Livery Team.

In the case of Cotton v. Wilmar, etc., Railroad Co., decided recently by the Supreme Court of Minnesota, it was alleged that the bell of a locomotive was not rung as the train approached a crossing; and it was held that the evidence of witnesses who were present, conscious, in the possession of their physical senses, and listening for signals, that they did not hear it ring, had probative value sufficient to take the issue to the jury although witnesses testified that they did hear it ring.

The court further held that where a person employs a livery team with a driver to carry him to a specified place, the relation of master and servant does not exist between the passenger and the driver; that they are not engaged in a common employment or a joint enterprise, and that the negligence of the driver in driving upon a railroad track without taking proper precautions to ascertain the approach of a train was not imputable to the passenger, though he would be responsible for his own personal negligence. The court further said that in such a case the primary duty of caring for the safety of the vehicle and passengers rests upon the driver, and that unless the danger is obvious or is known to the passenger, the latter may rely upon the assumption that the driver will exercise proper care and caution in approaching a place of danger. Where, however, the passenger knows that the driver is incompetent or careless, or sees that the driver is not aware of the danger and is not taking proper precautions, it is his duty to notify him of the danger, and a failure to do so is negligence.

### Landlord and Tenant—Contagious Diseases.

The liability of a landlord to his tenant for injuries by reason of infection of a contagious disease on account of the premises having previously been occupied by a tenant having such a disease, is discussed in *Finney v. Steele*, 41 So. Rep., 976. In this case, however, it was shown that the landlord had entrusted the disinfection of the house to an experienced physician and a trained, experienced, and competent nurse, and while there was testimony by other experts, giving it as their opinion that there were better means of disinfection than those that were used, yet as there was no testimony questioning the experience or competency of the physician and nurse to whom the work of disinfection was committed the court was of the opinion that the landlord was not liable.

# Court of Appeals of the District of Columbia.

HARRY J. MCGOWAN ET AL., APPELLANTS,

v.

ELLA ELROY ET AL.

EQUITY PRACTICE; BILL OF REVIEW; LEAVE TO FILE; LACHES; WILLS; REVOCATION.

1. A bill seeking to review a former decree, both for error of law appearing in the body of the decree and for newly discovered evidence, can only be filed by leave of court.
2. Where, however, a paper purporting to be a petition for leave to file a bill of review is in form such a bill, upon which a rule is issued to show cause why its prayers should not be granted, and a general demurrer is entered by defendants, upon which the bill is dismissed, it is too late for defendants, on appeal by complainants from the order of dismissal, to object in the appellate court that formal leave to file the bill of review was not granted.
3. Where the original bill, upon which there was a decree for complainants, was filed for the cancellation of a deed for fraud and undue influence, and no suggestion of want of jurisdiction was made by defendants, the equity court is not bound of its own motion to raise the question; and a bill of review alleging as error of law appearing in the original decree that the court was without jurisdiction, inasmuch as the complainants had an adequate remedy at law in an action of ejectment, will be dismissed.
4. T. made a will giving certain real estate to appellants, and subsequently a deed conveying to them the same property. She died January 11, 1902, and her will was filed in the office of the register of wills but not then offered for probate. April 19, 1902, appellees filed a bill in equity to vacate the deed, and there was a decree in their favor on February 10, 1906, vacating the deed, requiring defendants to surrender possession, for an account, etc. A few days after this decree appellants offered said will for probate, and the same was, after trial on a caveat filed by appellees, admitted to probate. Thereupon, appellants filed this bill to review the decree on the original bill, setting up the fact of the subsequent probate of the will. Held, that the bill of review must be dismissed because of the laches of appellants, but without prejudice to assert their rights under the will in such proceedings as they might be advised to take.
5. While a valid conveyance by a testator subsequently to the execution of his will of lands devised therein operates as a virtual revocation pro tanto of the will, because there is no estate left in the testator to pass under the will, no such effect follows in the case of a conveyance subsequently declared void.

No. 1677a. Decided November 7, 1906.

APPEAL by complainants from a decree of the Supreme Court of the District of Columbia, in Equity, No. 23,267, dismissing a bill of review. Modified and affirmed.

*Mr. Chas. T. Hendler* for the appellants.

*Mr. Chas. Bendheim* and *Mr. Edmund Burke* for the appellees.

*Mr. Chief Justice SHEPARD* delivered the opinion of the Court:

This is an appeal from a decree dismissing a bill of review.

The original bill was filed by the appellees against the appellants on April 19, 1902.

Complainants alleged that they were the children of two deceased sisters of Susan Turner, who died December —, 1901, intestate and without husband or children surviving her. That on February 10, 1854, Henry L. Turner, deceased, the then husband of Susan Turner, with other grantors, conveyed to Tepper and Hefferman, in trust for said Susan Turner, lot 4 in

square 227 in the city of Washington. That said trustees died prior to the decease of Susan Turner without having made any conveyance to her of the legal title, which therefore descended to their heirs at law, and the heir at law of one of them is therefore made a party defendant. That the defendants, Harry J. and Jesse A. McGowan, are the children of a deceased half-sister of Susan Turner. That by a paper purporting to be a conveyance, the said Susan Turner, on March 30, 1901, conveyed the said lot in fee simple to said defendants McGowan.

That at the time of said pretended conveyance, the said Susan Turner was about 63 years of age, and had become by reason of physical infirmities resulting from great age and other bodily infirmities, produced by paralysis and other diseases, a person of extreme mental weakness, and was incapacitated thereby from understanding the nature of any acts or deeds done or performed by her. That the defendants McGowan, by reason of long continued residence with said Susan Turner, and their relationship, had acquired great influence and control over her; and being young men of intelligence and business capacity, had been acting in a fiduciary and confidential capacity for said Susan Turner, and attending to and controlling all of her affairs, and enjoying her implicit confidence. That by reason of their long residence with her, and their fiduciary and confidential relations, they had acquired undue influence over said Susan Turner, which she had not the mental or physical power to resist, and thereby fraudulently obtained from her the execution of said conveyance which they had prepared for her. That complainants entered into possession under said conveyance, and are attempting to sell the same. The bill further alleged that prior to the said conveyance, the said defendants under like circumstances and by like means procured the execution by said Susan Turner of a paper writing purporting to be a will wherein said land and all of the personal property belonging to her were devised and bequeathed to them.

The prayers of the bill were that the deed and will be delivered up and canceled; that defendants be restrained from selling the premises or creating any lien thereon, and from offering said will for probate; that receivers be appointed to take possession of the premises and collect and preserve the fruits thereof; and that defendants be required to render an account of all the rents and revenues received by them and pay the same over to the receiver to be appointed.

The defendants entered a demurrer to the bill. No objection was made to the jurisdiction of the equity court.

This demurrer was sustained to so much of the bill as set out the execution of the will and sought to cancel the same and restrain its probate. Complainants filed an amended bill, omitting the said allegations, and otherwise substantially repeating those of the original one.

Defendants again demurred, but the same was overruled and they were granted time to answer the amended bill.

The defendants answered, expressly denying

the physical and mental weakness and disability of said Susan Turner, the existence of any fiduciary relations, and the exercise of any undue influence; and answering that she was competent to make the said deed and executed the same voluntarily, out of love and affection for defendants, in accordance with her often repeated declarations of intent so to do; and that the deed was prepared at her special request. They also denied that Susan Turner died intestate, and averred that she left a will dated February 17, 1901, and that she died on January 11, 1902, instead of in December, 1901, as alleged in the bill.

Evidence having been taken, a final decree was rendered February 10, 1905, vacating the conveyance set up in the bill, commanding the defendants to surrender the possession of the premises to the complainants, and referring the cause to the auditor to ascertain and report such sum as will compensate the complainants for the use and occupation of the premises by defendants from the 11th day of January, 1902. Costs were taxed against the defendants and execution ordered therefor.

On February 16, 1905, the defendants filed a petition for rehearing. This recited the order for possession and alleged: (1) That the record shows that there is on file in the office of the register of wills a paper writing purporting to be the last will of Susan Turner in which the lot described in the bill is devised to defendants. (2) That the equity court is without jurisdiction to determine whether said paper writing is the last will of Susan Turner, the Probate Court having exclusive jurisdiction thereof. (3) That if the defendants shall be required to yield possession of the premises and account to the complainants for the revenues thereof, and if the said paper writing be sustained in the Probate Court as the last will of Susan Turner, the effect of the decree rendered and to be rendered on the auditor's report would stand as a judgment against the said defendants as to their ownership of said property; whereas, by the judgment of the Probate Court these defendants would be the sole and absolute owners of the premises and as such entitled to the revenues thereof, and complainants would be without remedy. (4) That a petition for the probate of the said will has been filed in the Probate Court. The prayer was that the decree be modified so as to strike out so much of the same as awarded possession of the premises, and ordered an account to be taken of the revenues, or else that the decree be suspended until there shall have been a judgment by the Probate Court as to the validity of said will.

This petition was overruled March 24, 1905.

On April 23, 1906, defendants filed a paper entitled "Petition for leave to file a bill of review."

This paper in regular form of a bill alleged that on January 17, 1901, the said Susan Turner executed the following will:

"WASHINGTON, D. C., January 17, 1901.

"I Susan Turner do hereby bequeath to my nephews H. J. and J. A. McGowan my house and lot, situated in square number two hundred and twenty-seven and known as part of lot number four in the District of Columbia, together with all other real estate and personal

property I possess, my nephew H. J. McGowan to be executor.

her  
"SUSAN X TURNER.  
mark

"Witnesses:

MICHAEL HAYDEN.  
HARRY T. LEACH.  
JAMES D. STONER."

It was then further alleged that she executed a conveyance to them of the said lot on March 29, 1901. That she died January 11, 1902, and from the date of her death petitioners were in possession of said property. That on February 6, 1902, the said will was filed in the office of the register of wills. The petitioner then proceeds to set out the allegations of the original bill of complainants, the demurrer and answer thereto, and the proceedings thereon to and including the final decree.

It was further alleged that on February 16, 1905, one of the petitioners named in said will as executor thereof filed his petition praying that said will be admitted to probate; and on the same day petitioner filed the petition for rehearing (hereinbefore set out), and which was denied. It is further alleged that they noted an appeal from said decree, but abandoned the same because of the enormous expense of procuring and printing a transcript of the record, and it was docketed and dismissed in the Court of Appeals. That thereafter on June 14, 1905, a writ of assistance was issued out of the equity court and complainants were put in possession. That petitioners vacated the premises on June 1, 1905. That on June 26, 1905, a caveat was filed in the Probate Court by the respondents contesting the validity of said will. That the issues framed were, whether the said Susan Turner at the time of the execution thereof was of sound and disposing mind and capable of executing a valid deed or contract; and whether the execution was procured either by the fraud or the undue influence of petitioners or either of them, or of any other person or persons.

That a trial of such issue was had in the Probate Court on March 8, 1906, resulting in a verdict sustaining the will; and on April 23, 1906, a judgment was entered on said verdict establishing said will and admitting it to probate. That by virtue of said judgment petitioners are and have been since the death of Susan Turner the sole and absolute owners of said premises; and respondents, who never had any right or title thereto, are by virtue of the decree aforesaid in possession of the same. That petitioners are wholly without means to pay or raise the money to discharge the costs of said cause. That all of the respondents, save John H. Simms, are non-residents, and it would not be possible for petitioner to recover from them any rents and revenues that they may receive. It is also averred that the decree of February 10, 1905, is erroneous and ought to be reversed and set aside for error apparent on the record inasmuch as it appears therefrom that even if complainants ever had any rights in the premises, they had a plain, adequate, and complete remedy at law.

The prayers were for leave to file the bill of review, to the end that said decree may be

reviewed and reversed (especially in so far as it decreed possession of the premises and the account of the rent thereof). An injunction was asked enjoining respondents from doing anything further to carry said decree into execution pending action hereon. Receivers were asked to take possession of the property and conserve the rents and revenues thereof; and that a rule to show cause be issued to the respondents.

No formal entry of leave to file the petition was made, but it was filed, and on the same day the court entered a rule to show cause why the prayers of the bill should not be granted.

April 27, 1906, the respondents entered a demurrer to the bill because the same showed no case entitling them to the relief prayed, and leave to file the bill of review. May 4, 1906, the bill was dismissed, the decree reciting that "the cause came on to be heard upon the rule to show cause and the answer thereto by way of demurrer to the petition."

The petitioners doubting their right to appeal as a matter of right, made application for the allowance of a special appeal from the order dismissing their petition for review, which was granted May 14, 1906, and the same has been regularly prosecuted.

1. A bill of review lies either for errors of law appearing in the body of the decree, or for new matter arising, or discovered after it has been rendered. *Purcell v. Miner*, 4 Wall., 519, 521; *Ballard v. Searles*, 130 U. S., 50, 55.

It seems that where the first ground only is relied on the bill may be filed without obtaining leave, but where the second ground is alleged leave must be applied for and granted. And both grounds may be joined in one bill, in which case it can only be filed upon leave. *Ricker v. Powell*, 100 U. S., 104, 109.

The bill in this case joins the two grounds, and it is contended on behalf of the appellees that no appeal can be entertained from the order dismissing it because no leave to file was granted. This is upon the assumption that the order appealed from is one refusing leave to file. In our opinion, however, the decree is one, substantially, of dismissal upon the merits. The petition was in the form of a bill of review setting out the complainant's entire case, and while no formal order of leave was entered, it was permitted to be filed as such and a rule issued to show cause why its several prayers, including one for the appointment of a receiver, should not be granted. The respondents entered a general demurrer which was sustained, and the rule was then discharged with costs. It is too late now to object that no special order of leave to file the paper as a bill of review was entered.

Other objections to the bill as being multifarious, and supported by an insufficient oath, need not be discussed.

2. The only error alleged as appearing in the body of the decree sought to be reviewed, is that the equity court had no jurisdiction. The contention is that it is apparent from the allegations of the original bill that the complainants had a plain, adequate, and complete remedy at law by action of ejectment. No objection to the jurisdiction was made by the pleading, nor was suggested on the hearing. Whether sufficient or not to show that there

was no adequate remedy at law, the bill was for the cancellation of a deed, presenting, therefore, a subject-matter of a class over which equity has always had jurisdiction. Consequently, the equity court was under no obligation to consider the question of jurisdiction, of its own motion, upon the failure of the defendants to suggest or call it in question in any manner. Nor would an appellate court, thereafter, on direct appeal, be compelled to entertain the suggestion, though it might be within its discretion to do so of its own motion even. Certainly, under ordinary circumstances, as where the subject-matter of the bill is of a class within the general jurisdiction of equity, it will rarely, if ever, exercise such discretion. *Tyler v. Moses*, 13 App. D. O., 423, 443: 26 Wash. Law Rep., 771; *Slater v. Hamacher*, 15 App. D. O., 558, 569: 27 Wash. Law Rep., 671; *Smith v. Olcott*, 19 App. D. O., 61, 73: 29 Wash. Law Rep., 766; *S. P. R. R. Co. v. U. S.*, 200 U. S., 341, 349.

3. It remains to consider whether the bill ought to have been sustained on the alleged ground of new matter arising after the decree, and which could not have been put in evidence in the original cause. As has been set forth fully in the statement of the case, this new matter consisted of the probate of a will of Susan Turner had after the rendition of the decree. This will, made some months before the conveyance annulled by the decree, devised the premises in question to the appellants. It appears to have been filed in the office of the register of wills on February 6, 1902, by the executor named therein, who is one of the appellants, but no petition for its probate was filed until February 16, 1905, six days after the entry of the decree in the original cause. Having been made after the enactment of the act of Congress, approved June 8, 1898, providing for the probate of wills relating to real property, the unprobated will could not have been offered in evidence as an additional title on the part of the defendants in the original cause. As will be seen in the statement of the case also, the original bill sought to obtain cancellation of this will for fraud and undue influence practiced in obtaining its execution, and to restrain proceedings for its probate, but the court sustained the defendant's demurrer to the allegations relating thereto, and they were omitted in the amended bill on which the case went to hearing. The will having been subsequently admitted to probate, after trial upon a caveat filed by the appellees, vests in the appellant the title to the premises which they have been compelled to deliver into the possession of the appellees by the terms of the decree which they, for that reason, seek now to review and vacate. Moreover, by the same decree the appellees recovered of them the value of the rents of the premises from the time of the death of Susan Turner to the time of the decree, when ascertained by the auditor.

The case is a novel one and its conditions appeal strongly to a court of equity. Notwithstanding, we are constrained to deny the relief sought in this proceeding. Equity must be called into activity by the exercise of due diligence. In this respect the appellants have failed. The original bill attacking the title

claimed by the appellants under the deed was filed April 19, 1902, and the final decree was not rendered until February 10, 1905.

While the statutes regulating the probate of wills provide no time within which probate shall be applied for, yet they contemplate that this shall be speedily done. Code, sections 1135a and 830.

The will was promptly filed with the register of wills, but the appellants, both of them devisees, and one of them the executor named in the will, took no steps to have it probated until after the decree cancelling the deed was rendered. Ample time was afforded them to procure probate during the nearly three years in which this litigation was carried on; and, doubtless, the hearing thereof would have been further postponed upon application to give reasonable time therefor if necessary. Instead, they deliberately elected to rest their claim of title upon the deed alone, and were only stirred into activity in the matter of the probate of the will by the unsuccessful result of that election. As they could not have proved title under the will until after its probate, they are not necessarily concluded by such election, in respect of their ultimate rights thereunder, by reason of the decree cancelling their deed. And, to prevent their possible conclusion by the dismissal of the bill of review, the decree therefor may be modified so as to show that it is without prejudice to them. Any right that they may have by virtue of the subsequently established will may, therefore, be hereafter asserted in such proceedings as they may be advised to take. Whatever incidental injury they may sustain through their failure to promptly probate the will, will be the consequence of their laches therein.

4. In view of the possibility of further proceedings in prosecution of their rights under the will, it is proper to briefly consider two other questions raised by the appellees in support of the finality and conclusiveness of the decree sought to be reviewed.

(1) The first of these is, that by the terms of the will of Susan Turner, as stated in the bill of review, nothing more than a life estate is vested thereby in the appellants. There is no occasion to interpret the will in that respect—a question that may hereafter become necessary in any other proceeding thereunder—because the devisees are living, and their estate for life, at least, is conceded.

(2) The second point is that the deed, having been made subsequent to the execution of the will, necessarily operates as a complete revocation of the will, notwithstanding its cancellation for fraud and undue influence practiced in its procurement.

It seems to have been an established rule of the common law that a subsequent conveyance of land previously devised, or a binding contract for conveyance by the testator, worked a revocation of the previous will, although the same estate may become reinvested in the testator by reconveyance or release made during his life. See *Walton v. Walton* (7 Johns Ch., 258, 269), where the English authorities were fully reviewed by Chancellor Kent. Those authorities do not cover the precise question here involved, namely, the effect of a conveyance

declared void and of no effect. On the other hand, the proposition that a conveyance of the title subsequently declared void, does not operate as a revocation of a previous will seems to be reasonable, and has the support of weighty authority. *Hanes v. Wyatt*, 3 Bro. Ch., 156, 160; 1 Redf. Willa, p. 344.

In the language of Lord Thurlow in the case above cited: "Whoever orders it to be delivered up declares it to be no deed." The question is an unimportant one, however, in view of the provision of our Code, which declares the manner in which wills shall be revoked, and concludes with the words, "any former law or usage to the contrary notwithstanding." Code sec. 1626. This a substantial re adoption of the early Maryland statute then in force in the District of Columbia. Of course, a valid conveyance by the testator of lands before devised necessarily operates as a virtual revocation pro tanto, not by way of revocation of the will, however, but because there is no estate left in the testator to pass under the will. For the reasons given, the decree dismissing the bill of review will be modified so as to read without prejudice to the appellants, and so modified will be affirmed with costs. It is so ordered.

Modified and affirmed.

PATRICK T. MORAN, APPELLANT,

v.

EMIL W. WAGNER.

CONTRACTS; ENTIRE CONTRACT, BREACH OF AFTER PART PERFORMANCE; RESCISSION.

1. A contract for the sale and purchase of 18 cars of oats, 1,400 to 1,500 bushels to the car, of a certain grade, at a price stipulated, shipments to be made at the rate of two cars per month, is a single contract.
2. When the oats furnished were not of the grade called for by the contract the purchaser is justified in rescinding the contract in toto, provided he acts with due diligence.
3. And in such case, it is not material that the contract was not rescinded by the purchaser until after several deliveries had been made and received by him, the contract requiring that each shipment should be of the grade called for thereby.
4. Where, after the delivery to and receipt by the purchaser of about one-half the amount contracted for, though making complaint as to the quality of the oats, an examination of the contents of a car shipped disclosed that the oats were inferior to the grade contracted for, and he thereupon notified the vendor of his rescission of the contract as to the balance to be shipped, held that he was justified in so doing, and that the trial court erred in directing a verdict for the vendor for the difference in price of eight carloads not delivered, and resold for a less price than that named in the contract.

No. 1711. Decided November 8, 1906.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 47,754, entered upon a verdict directed by the court in an action for breach of contract. Reversed.

*Mr. R. F. Downing* and *Mr. H. W. Sohn* for the appellant.

*Mr. John B. Daish* and *Mr. J. D. Sullivan* for the appellee.

*Mr. Justice ROBB* delivered the opinion of the Court:

This was an action brought by appellee, a Chicago grain broker, against appellant for

breach of the following contract made with appellee's agent in the city of Washington, and confirmed by appellee in Chicago:

"CONFIRMATION SALE.

CHICAGO, Oct. 5, '04.

P. T. MORAN, Washington, D. C.

DEAR SIR: Referring to wire from W. F. Brooks, I hereby confirm sale to you today.

Cars sold, 18; quantity, 1,400 to 1,500 bu. to car; grade 2 oats; price, 35 for Nov. shipment. Destination,  $\frac{1}{2}$  c. bu. more for each succeeding month. Via ———. To be shipped 2 cars per month from Nov. To be shipped as requested during month.

W. F. BROOKS & Co.,

Ag'ts for Wagner.

P. T. MORAN,

E. W. WAGNER."

The amended declaration contained three counts.

The first count was for \$570, representing the difference in price of the oats for eight car-loads not delivered and resold at a less price than the price named in the contract. The second count was for \$93.30, for the loss on one car-load of oats containing 1,500 bushels shipped from Chicago April 5, 1905, and declined by defendant. The third count was the common counts in assumpsit, for \$663.30.

At the trial the court directed the jury to return a verdict for plaintiff upon the first count, to which ruling defendant excepted.

Upon the second count the court instructed the jury, in part, as follows:

"Now the question in controversy is the quality of the oats in that car. If this contract was made with reference to the grading of the oats by the Illinois system of inspection, both parties would be bound by it. If a mistake was made, they would have to make claim against that department. That depends upon whether this contract was made with respect to such custom. If it was, that inspection certificate would be binding so far as this car was concerned. It is not contemplated that these oats would have to be perfectly clean. They might not be such oats as a retail dealer would give to his customers, and there is evidence that one dealer cleans all of his oats. If they were not up to No. 2 grade and were not bought with an understanding that the inspector's certificate should be binding on both parties you must determine what kind of oats they were. If you find they were not up to this grade, that they were No. 3, or contained more dirt than they ought to have, then the defendant is entitled to that, and you should leave out of your verdict the amount claimed in the second count."

The defendant requested, among others, the following instructions:

"If the jury find from the evidence that the oats in car No. 8097, shipped by the plaintiff to the defendant under their contract in evidence, were not number two oats, but were of an inferior grade or quality, the defendant had a right to reject said oats and rescind said contract and their verdict must be for the defendant.

"If the jury find from the evidence that the oats in car No. 8097, shipped by the plaintiff to the defendant under their contract in evidence

were not number two oats, but were an inferior grade or quality, the defendant had a right to reject said oats and rescind said contract if he acted promptly and in good faith."

These instructions were denied, and exceptions duly noted.

The jury, under the court's instructions, returned a verdict for plaintiff upon the first count, and found for the defendant upon the second count.

The November, December, January, and February shipments were received and paid for by appellant, as was the first car-load of the March shipments. The February shipments and the first March shipments had sight drafts attached, and were paid for before examination. Complaint was subsequently made as to the quality of these shipments, and a small rebate allowed appellant. The second March shipment, car No. 8097, reached Rosslyn, Va., April 19, 1905, and appellant at once caused an examination to be made of the oats contained in this car to determine their quality. Independent examinations were made by his employees, who carried samples to him, by an inspector and an assistant inspector of the Washington Grain Exchange, an incorporated body of grain dealers, and by other grain dealers of Washington, all of whom testified at the trial that the oats were not No. 2 oats in that they contained an excessive amount of dirt. The appellant, after satisfying himself that the oats in this car were not what the contract demanded, dispatched the following letter to appellee on the day following the arrival of the car at Rosslyn:

"Office of P. T. Moran, wholesale dealer in flour, grain, and feed, 3259-3261 N street northwest.

Phone 105 West.

WASHINGTON, D. C.,

April 20, 1905.

E. W. WAGNER, Esq.

GENTLEMEN: I regret very much that I will be compelled to cancel balance of oat contract owing to the dirty condition of all the goods you have been shipping, there is a car on track this A. M. which is not any better than the previous cars, which I complained of. I can furnish you sworn statements if you require them from a number of my customers, who refuse to get any more oats from me because of the dirty condition of the goods I furnished them which you shipped me. I know you will understand I tried to be fair with you, and gave you every opportunity to furnish me clean oats, but I can not continue to let all my customers get away from me.

Yours truly,

P. T. MORAN."

To this letter appellee replied and suggested that the appellant reconsider his decision not to accept further shipments, but appellee received no response to his letter.

The only question in this case is whether appellant was legally justified in rescinding the contract. That the contract in this case is a single contract is clearly determined by the decision of the Supreme Court of the United States in *Norrington v. Wright*, 115 U. S., 188. In that case action was brought upon a contract for the sale and purchase of 5,000 tons of iron rails "at the rate of about one thousand (1,000) tons per month, beginning February,

1880, but whole contract to be shipped before August 1, 1880, at forty-five dollars (\$45.00) per ton of 2,240 lbs. custom-house weight, ex ship Philadelphia. Settlement cash on presentation of bills accompanied by custom-house certificate of weight." Through Mr. Justice Gray, the court said:

"The contract sued on is a single contract for the sale and purchase of 5,000 tons of iron rails shipped from a European port or ports for Philadelphia. The subsidiary provisions as to shipping in different months, and as to paying for each shipment upon its delivery, do not split the contract into as many contracts as there shall be shipments or deliveries of so many distinct quantities of iron. *Mersey Co. v. Naylor*, 9 App. Cas. 434, 439. The further provision that the sellers shall not be compelled to replace any parcel lost after shipment, simply reduces, in the event of such a loss, the quantity to be delivered and paid for."

In the instant case, instead of 5,000 tons of iron rails the contract called for 18 cars of oats, and, as cars undoubtedly vary somewhat in capacity, the quantity to be contained in each car was specified at between 1,400 and 1,600 bushels.

The contract being an entire contract, we think the case is ruled by the *Norrington v. Wright* case, and that the learned court below erred in directing a verdict for the plaintiff upon the first count. The jury found that the oats in the last shipment tendered the defendant were not No. 2 oats; in other words, that they were not such oats as the contract called for, and that the defendant was justified in declining to accept them. We fail to perceive any difference between a failure to deliver the quantity of oats at the time agreed upon and the failure to deliver the kind or quality of oats called for under the contract. The jury were, in effect, instructed that they must find a material difference between the oats in this car and No. 2 oats as defined by witnesses to justify the defendant in declining to accept them. The jury so found, and the fact of such material difference was thereupon settled. We do not think the defendant was called upon to wait until another shipment was received before he determined to rescind the contract. On the contrary, we think the breach of the contract by the plaintiff entitled the defendant, immediately the breach became known, to rescind the contract in toto, provided only that he acted with due diligence. Again, quoting from *Norrington v. Wright*:

"But the contract before us comes within the general rule: 'When no such independent circumstances are referred to, and the engagement is to furnish goods of a certain quality or character to a certain amount, the quantity specified is material, and governs the contract. The addition of the qualifying words "about," "more or less," and the like, in such cases, is only for the purpose of providing against accidental variations arising from slight and unimportant excesses or deficiencies in number, measure, or weight.' *Brawley v. United States*, 96 U. S., 168, 171, 172.

"The seller is bound to deliver the quantity stipulated, and has no right either to compel the buyer to accept a less quantity, or to

require him to select part out of a greater quantity; and when the goods are to be shipped in certain proportions monthly, the seller's failure to ship the required quantity in the first month gives the buyer the same right to rescind the whole contract, that he would have had if it had been agreed that all of the goods should be delivered at once.

"Being of opinion that the plaintiff's failure to make such shipments in February and March as the contract required prevents his maintaining this action, it is needless to dwell upon the further objection that the shipments in April did not comply with the contract because the defendants could not be compelled to take about 1,000 tons out of the larger quantity shipped in that month, and the plaintiff, after once designating the names of vessels, as the contract bound him to do, could not substitute other vessels. See *Busk v. Spence*, 4 Camp., 329; *Graves v. Legg*, 9 Exch., 709; *Reuter v. Sala*, above cited."

In the above case rails of the right *quality* but less in quantity than the contract demanded were contained in the shipments which formed the basis for the rescission of the contract. The only difference, therefore, between that case and the present case is that in one the contested shipments contained the right *quality* but the wrong *quantity*, while in the other the contested shipment contained the right *quantity* but the wrong *quality*. We think the statement of the difference between these cases points to the conclusion that quality is as much of the essence of the contract as quantity. The result certainly would be remarkable, should we hold that under the authority of *Norrington v. Wright* the delivery of a car containing 1,300 bushels instead of 1,400 bushels of No. 2 oats would justify the rescission of the contract, but that the delivery of a car containing 1,400 bushels of oats of an inferior grade, and, therefore, not susceptible of use by the defendant, would not. Had a car been delivered containing 1,300 bushels of No. 2 oats, he could have used the whole quantity immediately and the delay incident to the delivery of the 100 bushels would not have been a very serious matter, but, when a car containing oats he could not use and which he had not bought was shipped him, he certainly was injured. That some other dealer bought and *cleaned* these oats and thereby made them merchantable has nothing to do with this case. Appellant contracted for one thing and received another, which he was not bound to accept.

We attach no significance to the fact that in this case the contract was not rescinded until after several deliveries had been made. The contract demanded that *each* shipment should be No. 2 oats, and it is obvious that until some shipment fell below that grade there would be no breach, and no right of rescission.

When a shipment, whether the first or the last one, fell below contract grade, the right of rescission accrued. The judgment is reversed with costs.

Reversed.

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## Court of Appeals of the District of Columbia.

ADOLPH F. LIPPARD ET AL.,  
APPELLANTS,

v.

IDA P. HUMPHREY ET AL.

WILLS; ILLITERATE PERSONS; PRESUMPTION AS TO  
KNOWLEDGE OF CONTENTS; DECLARATIONS OF TEST-  
ATRIX.

1. If possessed of the necessary capacity, persons illiterate as well as literate may dispose of their property by will.
2. In all cases, the subscribing witnesses, if living and within the jurisdiction, must be called to prove the fact of execution; and if it appears from their evidence that the will was formally executed and the testator competent it must be admitted to probate.
3. If a person of sound mind executes a will and the same is his voluntary act, the law presumes knowledge on his part of its contents; and the fact that the testator was an illiterate person does not vary the rule.
4. The presumption that a testator knew the contents of the instrument, the execution of which he called witnesses to attest, and that it expressed his will, stands unless there are attending circumstances leading to a different conclusion.
5. Declarations by a testatrix, after the making of her will, indicating that she had made a different disposition of her property from that recited therein, are inadmissible for the purpose of showing that she did not know the contents of her will, and are rightly excluded.

No. 1691. Decided November 21, 1906.

APPEAL by caveators from a judgment of the Supreme Court of the District of Columbia, holding the Probate Court, Probate No. 12,129, admitting a will to probate, after contest. Affirmed.

*Mr. Chapin Brown and Mr. C. H. Bauman* for the appellants.

*Mr. B. F. Leighton and Mr. C. Clinton James* for the appellees.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This is an appeal from a judgment admitting to probate the will of Loraine Lippard who died December 9, 1903. The will, executed April 27, 1898, devised and bequeathed the entire estate of the testatrix to the Rev. Chastain C. Meador in trust: (1) To pay all funeral expenses and debts. (2) For the use of her husband, Adolph Lippard, during his life. (3) To pay the expenses of the said husband's last illness and funeral. (4) Upon the death of said husband to divide the same among five children named, according to the directions therein contained. The trustee was also appointed executor.

Petition for probate was filed April 18, 1904, by the executor, who is now dead. June 17, 1904, Adolph Lippard, the surviving husband, and William A. Lippard and Adolph F. Lippard, Jr., sons of the testatrix, whose interests under the will were very small compared with the others, filed their caveat contesting the probate of the will. The grounds of contest alleged therein were: (1) That the paper writing is not the will of the deceased. (2) That deceased was not, at the time of the alleged execution of the paper writing, of sound mind and memory, or capable of making a will. (3) That the deceased did not, at the time of execution, declare the

paper to be her will. (4) That the alleged will and its execution were obtained by the fraud and undue influence of persons unknown to the caveators. (5) That the alleged will was not freely executed, but that the subscription thereto, and publication thereof, were procured by fraud and coercion exercised by persons unknown. Answers having been filed to the caveat, the issues joined were set down to be tried by jury.

The caveatees introduced as witnesses the three subscribing witnesses to the will. The first witness, Eva J. Parker, who has since married a Mr. Dolan, testified that, on April 27, 1898, she was bookkeeper in the office of her father, a real estate broker, at No. 435 Four-and-a-half street S. W., in the city of Washington, and had known the testatrix intimately all her life. That the paper writing, consisting of three typewritten sheets, shown to witness, bears her signature as a witness. That testatrix made her mark to the paper in the presence of witness and the other two subscribing witnesses. Testatrix said it was her will. She was of sound mind and capable of making a deed or will. That she said it was her will and wanted witnesses to her mark. That the will was not read to the testatrix nor did she discuss its contents; only said it was her will and she wanted three witnesses to sign it. After execution testatrix took the paper away with her, and did not mention it to witness afterwards. That after the death of testatrix, Dr. Meador said he was her executor, a fact which witness did not before know. That witness did not know whether or not testatrix could write.

James F. Horan identified his signature as a subscribing witness. Said he was acquainted with testatrix and was sent for to come to Parker's office. Testatrix was sitting at a desk. Miss Parker and Mr. Leimbock were present. Testatrix laughed and talked in German with Leimbock. She was capable of making a valid deed or contract. Miss Parker "read something off the will," and told him it was a will and she wanted us as witnesses. Testatrix then said it was her will. She made her cross-mark while he was there. That he does not know in whose handwriting the name "Loraine Lippard" at the bottom of the paper is. The will was not read over to testatrix while witness was there. Does not know if testatrix could read or write.

The third subscribing witness, Henry A. Leimbock, testified that he wrote his name as witness upon the paper produced as the will, and also to the signatures of the other witnesses. He had known testatrix for forty years. All three witnesses were present when testatrix called the paper her last will and testament. That she made her mark. She was capable at the time of making a valid deed or contract. She could talk German. She could not write, and witness did not know if she could read. When witness and Horan went in, Miss Parker said she wanted them to attest a will. Testatrix said: "I have sent for you gentlemen to witness my last will and testament." He did not know in whose handwriting her name appeared, nor the words "her mark," but supposed that Miss Parker wrote the latter.

Upon the conclusion of this evidence the caveators moved the court to instruct the jury "that there being no evidence that this will

was read over to the testatrix, or that she knew or had made known to her the contents of the paper, she being illiterate, and unable to read or write, the verdict must be in favor of the contestants on the question of execution and whether it was her will or not her will under the first and second issues." This was denied, and exception noted.

The will was then offered and read. Adolph F. Lippard, the husband of testatrix, testified on behalf of the caveators substantially as follows: He and testatrix had lived together sixty-five years. She was aged eighty-two years at the time of her death. His testimony tended to show that the property in the name of his wife had been acquired in great part by his efforts, etc. She could neither read nor write. They lived happily. He never saw the will. Had talks with her about the way she intended to leave the property a year before April, 1898, and three months before her death. When asked what she said objection was made and sustained, and exception reserved. He knew nothing of the will until it was read to him by Dr. Meador after his wife's death. Both attended Dr. Meador's church. Other witnesses were called and asked to tell what testatrix had said to them about the disposition of her property—most of this occurring not long before her death. The testimony was excluded upon objection.

In the examination of only one of these witnesses was the statement made of what was expected to be proved by these declarations. The witness was Sarah Lippard, a daughter-in-law of testatrix. The statement of what was to be proved by her was, that eight or ten months before her death, testatrix declared to her that she had left her property in a manner different from that recited in the will produced.

It was proved by the caveatees that Dr. Meador produced the will after testatrix's decease, and gave it to an attorney to file in the office of the Register of Wills.

On conclusion of all the evidence, caveators renewed their motion made at the close of the proof of execution, and on the same grounds, which was again denied. Caveatees moved an instruction to find for them on all issues. The court overruled this as to the two issues relating to execution, and granted it as to the remaining issues relating to fraud and undue influence.

The court then charged the jury that unless they believed that the contents of the paper were known to testatrix at the time of execution, they should find for the caveators. If, however, they should find from the evidence that testatrix did know the contents of the paper, and did sign the same by her mark, as her will, in the presence of witnesses, who signed the same as witnesses in her presence, the verdict should be in favor of the caveatees.

The jury returned answers to all of the issues favorably to the caveatees; and from the judgment thereon entered probating the will this appeal has been prosecuted.

When or by whom the will of Loraine Lippard was written does not appear in the evidence, but there is not a single circumstance of suspicion attending its execution. Though an aged and illiterate woman, she was of sound

mind and body at the time. Bearing the instrument, she went alone to the office of a young lady whom she well knew. She said it was her will, and that she had come to have its execution attested by three witnesses, which number was then required to a will creating an estate in land. The two other witnesses sent for were acquaintances, one of them for forty years. She declared the instrument to be her last will, and asked them to attest it. She affixed her mark to it in their presence, and they then and there signed as witnesses. The witnesses were competent persons, evidently intelligent, had no interest whatever in the will, and no attempt was made to impeach their credibility. When the act was complete the testatrix departed with the paper, and evidently delivered it to the pastor of her church, who was made executor and trustee.

Under such conditions the court was undoubtedly right in denying the appellant's motion to direct a verdict for them, on the issue of due execution, because the will was not read to the testatrix at the time of execution and attestation. If possessed of the necessary capacity, persons illiterate as well as literate can dispose of their property by will. No distinction is made between them in the former or existing statutes regulating the making of wills, and the procedure for their probate. In all cases the subscribing witnesses, if living and within the jurisdiction, must be called to prove the fact of execution; and if it appears from their evidence that the will was formally executed, and the testator competent, it must be admitted to probate. Code section 1626, 131, 132, 134.

It is a settled rule, under such statutes, that if a person of sound mind executes a will, and the same is his voluntary act, the law presumes knowledge on his part of its contents. *Taylor v. Creswell*, 45 Md., 422, 431).

The appellants concede this where the testator is able to read the instrument, but deny its application where he is unable to do so.

Illiterate persons, as well as others, may wish the contents of their wills to remain unknown to all but the confidential scrivener. Being of sound minds, and having satisfied themselves in their own way that the will has been written as directed, they may call in witnesses and execute it by affixing their marks, or having their names signed, without having the contents again made known to them. There is no good reason for excluding them from the benefit of the presumption which attaches to the same acts when performed by persons able to read and write. The great weight of authority is opposed to making such an exception to the general rule. *Shanks v. Christopher*, 3 A. K. Marsh, 144; *Boyd v. Cook*, 3 Leigh, 32, 51; *Hashauer v. Hashauer*, 26 Pa. St., 404, 406; *Vernon v. Kirk*, 30 Pa. St., 218, 224; *King v. Kinsey*, 74 N. C., 281, 283; *Guthrie v. Price*, 23 Ark., 296, 407; *Clifton v. Murray*, 7 Ga., 564; *Doran v. Mueller*, 78 Ill., 342, 346; *Browning v. Budd*, 6 Moore, P. C. C., 430, 445.

The majority of the cases cited by the appellants maintain the view that the presumption that a testator knew the contents of the instrument, the execution of which he called the witnesses to attest, and that it expressed his

will, stands unless there are attending circumstances leading to a different conclusion. As we have seen, there were no such circumstances in this case.

Passing to the question raised on the second assignment of error, we think it equally clear that there was no error in excluding the evidence of declarations made by the testatrix concerning the contents of her will. Evidence of the declarations of a testator are sometimes admissible in cases where the mental capacity of the testator is in issue, not, however, as proof of the facts declared, but as tending to show the condition of mind at the time of execution. *Throckmorton v. Holt*, 180 U. S., 552, 573.

In this case, the mental capacity of the testatrix was clearly proved, and there was no evidence whatever tending to dispute the fact. Moreover, the declarations had no tendency to show the want of mental capacity. The sole object of the proposed evidence was necessarily to show that because the testatrix had, some time after executing the will, made declarations indicating that she had made a different disposition of her property from that recited therein, she could not have known the contents at the time of its execution. The proposition is without foundation, either on principle or authority.

The judgment was right and will be affirmed. Affirmed.

Agency.—The right of an agent, who by mistake pays to a third party money in his possession belonging to his principal, to maintain in his own name an action for money had and received to recover it back, is sustained in *Parks v. Fogleman* (Minn.), 4 L. R. A. (N. S.), 363.

#### Book Notice.

THE POWER TO REGULATE CORPORATIONS AND COMMERCE. A discussion of the Basis, Nature and Scope of the Common Law of the United States. By Frank Hendrick. Published by G. P. Putnam's Sons. New York and London. 1906.

The object of the book is sufficiently stated in the preface, as follows:

"This book is an attempt to define the limits within which the governments of the several States and of the United States may secure freedom of trade by control of the persons and things therein, and to indicate the respective powers of the three departments of Government in the exercise of such control.

"The relation of the three departments of the Government of the United States to one another and those of the State governments in the control of interstate commerce and of corporations is set forth with reference to over two thousand cases involving questions of constitutional law.

"The mooted question of the existence of a body of constitutional principles of such comprehensiveness as to be called the 'Common Law of the United States' is discussed exhaustively in this book for the first time, not only as a basis of remedy for the violation of rights guaranteed by the Constitution of the United States, but also as a basis of jurisdiction of the United States courts. The rights and remedies of public service corporations and the public

against each other at common law and under acts of Congress and of the State legislatures are analyzed in the light of the questions arising under the railroad rate law. The author's conclusion is that the power of the Government of the United States to regulate corporations and commerce is ample, and that it should be exercised fully in accordance with Gladstone's plan of '*working the institutions of the country*,' i. e., by putting into effective operation the existing machinery of the Government."

Bills and Notes.—A person who receives a check drawn on a bank in another place is held, in *Lewie, H. & Co. v. Montgomery Supply Co.* (W. Va.), 4 L. R. A. (N. S.), 132, not to be required to transmit such check by the only or last mail of the day next after its receipt, if such mail closes or departs at an hour so early as to render it inconvenient for the holder to avail himself of it.

A note indorsed by an accommodation indorser, before delivery, for the interest due on outlawed notes, upon which he was jointly and severally liable, is held, in *Medomak Nat. Bank v. Wyman* (Me.), 4 L. R. A. (N. S.), 562, to remove as to him the bar from the earlier notes.

Banks.—A bank director is held, in *Hicks v. Steel* (Mich.), 4 L. R. A. (N. S.), 279, not to be liable for breach of his duty as such in inducing the bank to extend credit to an individual beyond the statutory limit, and in making false representations as to paper presented for discount, where he was not at the time acting as director, but as agent for the borrower.

Arson.—An attempt to commit arson is held, in *State v. Taylor* (Or.), 4 L. R. A. (N. S.), 417, to be made by employing and paying persons to do the act, furnishing them materials and a horse, showing them how to start the fire, and starting them on their way, although the persons employed do not, in fact, intend to carry out their agreement, and one is acting with the knowledge of the owner of the building for the purpose of entrapping the others.

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## RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

There will be a meeting of the stockholders of the U. S. Bindery and Paper Goods Company at the office, 622 D st. N. W., on January 21, 1907, from 12 to 1 o'clock, for the election of trustees for the ensuing year. A. C. HOUGHTON, Secy. 50-11

**Stockholders' Meeting (Annual).**  
OFFICE OF PUEBLO MINING COMPANY,  
Rooms 710-711 Colorado Building,  
WASHINGTON, D. C., November 27, 1906.

**To the Stockholders of the Pueblo Mining Company:**  
Please take notice that the annual meeting of the stockholders of the Pueblo Mining Company will be held at the principal office of the company, in the city of Washington, D. C., on Tuesday, the 8th day of January, 1907, at 12 o'clock noon, for the purpose of electing nine trustees, and for the transaction of such other business as may properly come before the meeting. The stock transfer books of the company will be closed on Saturday, the 29th day of December, 1906, at 3 o'clock P. M., and will remain closed until Wednesday, the 9th day of January, 1907, at 10 o'clock A. M.

[Seal] JNO. T. MCCOY, Secretary. 48-31

## Legal Notices.

## FIRST INSERTION.

**Wolf & Rosenberg, Solicitors**

In the Supreme Court of the District of Columbia.  
**Margaret Loeffler, Complainant, v. John Loeffler, Defendant, and a Woman by the Name of Jarbo or Wicks, the Surname being Unknown, Corespondent.** Equity, No. 28,657.

The object of this suit is to obtain an absolute divorce from the defendant, John Loeffler, because of his adultery with the correspondent, a woman by the name of Jarbo or Wicks, the Christian name and surname being unknown. On motion of the complainant, it is, this 7th day of December, A. D. 1906, ordered that the correspondent, a woman by the name of Jarbo or Wicks, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order shall be published once a week for three successive weeks in The

[Seal] Washington Law Reporter and The Washington Herald before said day. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by R. P. Belew, Asst. Clerk. 50-31

**H. W. Sohn, Solicitor**

In the Supreme Court of the District of Columbia.  
**The Farmers' and Mechanics' National Bank of Georgetown, Complainant, v. Arthur Small, Admr., et al., Defendants.** Equity, No. 28,624. Doc. No. 59.

The object of this suit is to sell the real estate of which Anthony Hanlon died seized, and described in the bill of complaint in this cause to pay the debt due by him to the complainant and other debts of said Anthony Hanlon; it appearing that the summons to Anthony Hanlon, Jr., Anthony J. Hanlon, Infant, and Mary T. Hanlon, Infant, has been duly returned "not to be found," it is, on this 14th day of December, 1906, on motion of H. W. Sohn, solicitor for the complainant, ordered that said Anthony Hanlon, Jr., Anthony J. Hanlon, and Mary T. Hanlon cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in cases of default. Provided a copy of this order is published once a week for three successive weeks in The Washington Law Reporter and

[Seal] and The Washington Herald before said day. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 50-31

Justice blanks of every description for sale at this office.

## Legal Notices.

**E. H. Thomas and A. B. Duvall, Attorneys**  
In the Supreme Court of the District of Columbia,  
Holding a District Court.  
**In re the Opening of a Minor Street in Square 801, in the District of Columbia.**  
District Court, No. 704.

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of section 1808 et seq. of the Code of Laws for the District of Columbia, and "An act making appropriations to provide for the expenses of the District of Columbia for the fiscal year ending June 30, 1907, and for other purposes, approved June 27, 1906," have filed a petition in this court praying the condemnation of the land necessary for the opening of a minor street from M street to N street, in square 801, in the District of Columbia, as shown on a map or plat filed with said petition, as part thereof, and praying, also, that a jury of five judicious, disinterested men, not related to any person interested in these proceedings, and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States Marshal for the District of Columbia to assess the damages each owner of land to be taken may sustain by reason of the opening of the aforesaid minor street, and the condemnation of the land necessary for the purposes thereof, and to assess the benefits resulting therefrom, including the expenses of these proceedings, as provided in and by the Code and act of Congress heretofore referred to. It is, by the court, this 7th day of December, A. D. 1906, ordered that all persons having any interest in these proceedings be, and they are hereby, warned and commanded to appear in this court on or before the 3d day of January, A. D. 1907, at 10 o'clock A. M., and to continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessments of benefits of the jury to be empaneled and sworn herein; and it is further ordered that a copy of this notice and order be published once in The Washington Law Reporter, and once in The Evening Star, Washington Herald, and Washington Times, newspapers published in said District, before the said 3d day of January, A. D. 1907. It is further ordered that a copy of this notice and order be served by the United States Marshal for the said District, or his deputies, upon such of the owners of the fee of the land to be condemned herein as may be found by the said marshal, or his deputies, within the District of Columbia, before the said 3d day of January, A. D. 1907. By the

[Seal.] Court: JOE BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by E. J. McKee, Asst. Clerk. 50-11

**F. R. Keys, Solicitor**  
In the Supreme Court of the District of Columbia,  
Holding an Equity Court.  
**Annie R. Snyder, Complainant, vs. John D. P. Snyder, Defendant, and Marguerite A. Tefke, Corespondent.** Equity, No. 28,105.

The object of this suit is to obtain an absolute divorce. On motion of the complainant, it is, this 23d day of November, 1906, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided, a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Times.

[Seal] By the Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 50-31

**David Rothschild, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.  
**Estate of Bernard Mynes, Deceased.**  
No. 14,052. Administration Docket.

Application having been made herein for letters of administration on said estate, by Margaret M. Weiss, sister of the deceased, it is ordered, this 10th day of December, A. D. 1906, that Mary McNally, James Mynes, Thomas Mynes, Patrick Mynes, and all others concerned, appear in said court on Monday, the 14th day of January, A. D. 1907, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of

[Seal] Wills for the District of Columbia, Clerk of the Probate Court. 50-31

**Legal Notices.**

**Oliver S. Meiseroli, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Catherine B. Schafer, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of December, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of December, 1906. HENRY CASPER WALTER, 1127 18th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,088. Administration. [Seal.] 50-31

**Wm. H. Linkins, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Alice A. Linkins, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of December, 1906. D. HOWARD LINKINS, 800 19th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,794. Administration. [Seal.] 50-31

**Gordon & Gordon, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Samuel Cross, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 7th day of December, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of December, 1906. J. HOLDSWORTH GORDON, 830 4 1/2 st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,066. Administration. [Seal.] 50-31

**Hayden Johnson, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Harriet V. Gobrecht, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of December, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of December, 1906. EVELYN C. WIDNEY, 1906 18th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,764. Admn. [Seal.] 50-31

**In the Supreme Court of the District of Columbia.**  
**Howard Broadus v. Georgiana Broadus, Alphonzo Waters.** No. 28,082. Equity Dec. 59.

The object of this suit is to obtain an absolute divorce from the defendant, Georgiana Broadus, because of her adultery with the defendant, Alphonzo Waters. On motion of the complainant, it is, this 7th day of December, 1906, ordered that the defendant, Alphonzo Waters, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in

[Seal] In The Washington Law Reporter and The Bee before said day. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 50-31

**Legal Notices.**

**George E. Flemming, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice that the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Lafayette C. Loomis, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 31st day of December, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 18th day of December, 1906. UNION TRUST COMPANY, by George E. Flemming, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,286. Admn. [Seal.] 50-31

**Nelson Wilson, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Robert J. McClellan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 18th day of December, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of December, 1906. EDWARD O. REED, 1216 8 street northwest. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,078. Admn. [Seal.] 50-31

**G. A. Berry, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Jeremiah K. Lynch et al. v. Michael K. Lynch et al.**  
**Equity, No. 25,998.**

The object of this suit is to construe the language of the last will and testament of Jeremiah Lynch, deceased, to determine whether or not by the terms thereof a fee simple title to the real estate therein described is now in the heirs of Honora Lynch, deceased, wife of said Jeremiah Lynch. On motion of the plaintiff, it is, this 12th day of December A. D. 1906, ordered that the defendants, Julia Lynch, Mary Lynch, Margaret Lynch, Ellen Lynch, James Lynch, Julia Lynch, Daniel Lynch, Michael Lynch and wife Kate Lynch, John Lynch and wife Johanna Deneen Lynch, James Lynch, Honoria Lynch, Johanna Lynch, Bridget Lynch, Mary Lynch Dineen and husband Patrick Dineen, Frank Neilligan and wife Annie Neilligan, Edward Barry, Frederick Barry, Mary Barry, Emmet Barry, Thomas Barry, Mary Barry Kingsley and husband John J. Kingsley, Kate Kennelly, Thomas Cox and wife Emma Cox, Robert Cox, Williams Cox and wife Josephine Cox, and James Cox, cause there appearances to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This notice is to be published in The Washington Law

Reporter and The Washington Herald once a [Seal] week for three successive weeks before the return hereof. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 50-31

**F. H. Stephens, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Frank Kolp, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of December, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of December, 1906. THERESA WARMITH, 1924 Lemon st. Balto., Md. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,084. Admn. [Seal.] 50-31

**Legal Notices.****W. B. Reilly, Solicitor****In the Supreme Court of the District of Columbia,  
Holding an Equity Court.****Carrie A. Hobson, Complainant, v. Joseph H. Hobson  
and Della Young, Defendants.  
Equity, No. 26,847.**

The object of this suit is to obtain a divorce a vinculo matrimonii on the grounds of the adultery on the part of the defendant, Joseph H. Hobson, with the defendant and correspondent, Della Young. On motion of the complainant it is, this 7th day of December, A. D. 1906, ordered that the defendants, Joseph H. Hobson and Della Young, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three consecutive weeks in

The Washington Law Reporter and The Washington Herald. **HARRY M. CLABAUGH,** Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 50-3t

[Filed December 12, 1906. J. R. Young, Clerk.]

**I. Williamson and Jas. F. Bundy, Solicitors****In the Supreme Court of the District of Columbia.  
Addie Dailey et al. v. Arabella Stark et al.  
No. 26,619. Equity Doc. 59.**

The object of this suit is to sell, to make partition, lot 9 in square 100, Washington, D. C., of which Peter Hedge-man died seized. On motion of the complainants, it is, this 12th day of December, 1906, ordered that the defendants, Arabella Stark, Clyde W. Stark, Nona Trent, Abbie Kelly, David Reid, Charlie Reid, Daniel Reid, James Carter, and Felix Robinson, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Wash-

ington Law Reporter and The Washington Herald before said day. **HARRY M. CLABAUGH,** Chief Justice. J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 50-3t

**Robert S. Hume, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Walton Goodwin, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of August, 1906. **BETTY WALKER GOODWIN,** 1516 P St. Attest: **WM. C. TAYLOR,** Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,628. Administration. [Seal.] 49-3t

**SECOND INSERTION.****W. Russell Graham and Herbert A. Wrenn,  
Attorneys****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of James Storey, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 30th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 30th day of November, 1906. **JAMES STOREY,** 1513 Half St. S. W.; **MARY JOHNSON,** 1027 N. J. ave. S. E. Attest: **JAMES TANNER,** Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,363. Administration. [Seal.] 49-3t

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Company, 518 Fifth Street N. W.

**Legal Notices.****Geo. Francis Williams, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Robert M. Lookwood, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 21st day of June, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of December, 1906. **FANNIE H. LOOKWOOD,** 2020 I. st. N. W. Attest: **JAMES TANNER,** Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,783. Administration. [Seal.] 49-3t

**John B. Larnar, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Susanah A. Chapman, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of December, 1906. **THE WASHINGTON LOAN AND TRUST COMPANY,** by Frederick Elchelberger, Trust Officer. Attest: **JAMES TANNER,** Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,680. Administration. [Seal.] 49-3t

**John B. Larnar, Attorney.****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Julia N. Rowzee, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of December, 1906. **THE WASHINGTON LOAN AND TRUST COMPANY,** by Frederick Elchelberger, Trust Officer. Attest: **JAMES TANNER,** Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,977. Administration. [Seal.] 49-3t

**George E. Flemming, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Henry C. Burch, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of December, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of December, 1906. **UNION TRUST COMPANY,** by George E. Flemming, Secretary. Attest: **JAMES TANNER,** Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,063. Administration. [Seal.] 49-3t

**Wolf & Cohen, Attorneys****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Selmar W. A. Grimm, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same with the vouchers thereof, legally authenticated, to the subscriber on or before the 28th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of December, 1906. **GUSTAVE DITTMAR,** 702 9th St. N. W. Attest: **JAMES TANNER,** Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,060. Administration. [Seal.] 49-3t

**Legal Notices.****Geo. F. Havell, Attorney****In the Supreme Court of the District of Columbia.****Ida Walling v. Charles P. Walling and Della Walsh.**  
Equity, No. 25,995.

The object of this suit is to obtain an absolute divorce on the ground of adultery. On motion of the complainant, it is, this 28th day of November, 1906, ordered that the defendants, Charles P. Walling and Della Walsh, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Times before said day. HARRY M. CLA-BAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 49-31

**Brandenburg & Brandenburg, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John C. Dougherty, late of the State of Louisiana, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of December, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3d day of December, 1906. MARY E. DOUGHERTY, care of F. W. Brandenburg, Fendall Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,044. Administration. [Seal]. 49-31

**Baker, Sheehy & Hogan, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Margaret Shanahan, Deceased.**  
No. 14,024. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Joseph C. Sheehy, it is ordered, this 3d day of December, A. D. 1906, that Thomas J. Daly, Edward Raedy, Mary Cook, Johanna Reese, Catherine Walsh, Mary Horan, Thomas Walsh, Mary Murphy, Johanna Flynn, Patrick Walsh, son of Richard Walsh (deceased), Patrick Walsh, son of Thomas Walsh (deceased), Mary Welch, Edward Walsh, and John Egan, and all others concerned, appear in said court on Monday, the 7th day of January, A. D. 1907, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 49-31

**Wilson & Barksdale and Jas. K. Polk, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**In re Estate of Martha Williams, Deceased.**  
No. 14,026.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court, for letters of administration on said estate, with a paper writing dated November 3, 1906, purporting to be a will annexed by Mary Hutchinson, it is ordered, this 3d day of December, A. D. 1906, that notice be and hereby is given to the unknown next of kin and heirs at law of Martha Williams, deceased, and to all others concerned, to appear in said court on Monday, the 7th day of January, A. D. 1907, at 10 o'clock A. M., to show cause why said paper writing should not be admitted to probate and record, and why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 49-31

**Legal Notices.****Geo. F. Collins, Solicitor****In the Supreme Court of the District of Columbia.****In Re Lawson Council, No. 297, Independent Order of St. Luke, a Corporation.** Equity, No. 23,700.

Upon consideration of the petition of Lawson Council, No. 297, Independent Order of St. Luke, a corporation, asking for a dissolution of its corporate existence, it is this 20th day of November, A. D. 1906, ordered and adjudged that all persons interested in said corporation appear and show cause on or before the 24th day of December, A. D. 1906, if any they have, why said corporation should not be dissolved as prayed. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star before said day. By the Court: ASHLEY M. GOULD, Chief Justice. True copy. Test: J. R. Young, Clerk, by R. P. Belew. 49-31

**Hamilton, Colbert & Hamilton, Attorneys**  
**In the Supreme Court of the District of Columbia.**  
**Southern Disney Shade Fixture Company v. Disney**  
**Shade Co.** Equity No. 25,965.

The trustee appointed in the above entitled cause, John J. Hamilton, having reported the sale to Henry E. Kondrup of the letters patent numbered 730241, dated June 9, 1903, issued to William Disney for improvement in shade hangers known as the Disney Ball-bearing Adjustable Window Shade Hangers, together with all rights thereunder, except the right to exploit the sale of said hanger in the District of Columbia, and the States of Virginia, Georgia, and Alabama, for the sum of \$350 cash, it is by the court, this 4th day of December, 1906, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 24th day of December, 1906. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said last mentioned day. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 49-31

**Irwin B. Linton, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**  
**Estate of William O. Denison, Deceased.**  
No. 14,038. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Georgia B. Denison, it is ordered, this 4th day of December, A. D. 1906, that Helen Paddock, Clara Sheffield, Benjamin Denison, Edward Denison, George Denison, William J. Denison, and Alida Roberts, and all others concerned, appear in said court on Monday, the 7th day of January, A. D. 1907, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 49-31

**John B. Larner, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Susan W. Fowler, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of December, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3d day of December, 1906. PHILIP F. LARNER, 918 F St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,962. Administration. [Seal]. 49-31

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**Legal Notices.**

**Thomas Walker, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Mary Ann Orrid, Deceased.**

No. 13,919. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by William D. Jarvis, it is ordered, this 7th day of December, A. D. 1906, that Charles Orrid, of Cleveland, Ohio, and George Orrid, Henry Orrid, Harrison Orrid, Anna Evans and Mariha Barnes, of Hemstead Post-Office, King George County, Va., and all others concerned, appear in said court on Monday, the 7th day of January, A. D. 1907, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] **ASHLEY M. GOULD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 48-8t

**Edwin Forrest and Chas. Bendheim, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Special Term of Probate Business.**

**In the Matter of the Estate of J. W. Pumphrey, Deceased.** No. 13,615.

Application having been made herein for the probate and admission to record of the paper writing dated the 16th day of October, 1897, and purporting to be the last will and testament of the late James W. Pumphrey, by Beulah Simkins, the person named as executrix therein, and for letters of administration on said estate, with the will annexed, and citation having been returned by the marshal, not to be found, as to each and all of them, it is, this 6th day of December, 1906, ordered that George Tucker, Howard Tucker, James Tucker, and William Tucker, Beattie Nebinger, Susie Nebinger, Alexander Nebinger, and Percy Thomas, and all others interested or concerned, appear in said court on Tuesday, the 15th day of January, 1907, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice be published in The Washington Law Reporter and The Evening Star, a newspaper of general circulation in said District, once in each of three successive weeks before said 15th day of January, 1907, the first publication hereof to be made not less than thirty days before said January 15th, 1907. By the Court:

[Seal] **ASHLEY M. GOULD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 48-8t

**THIRD INSERTION.**

**Alex. G. Bentley, Attorney.**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Armilda McGrew, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the 23d day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of November, 1906. **EDWARD A. BALLOCH, 1018 15th st., N. W.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 14,042. Administration. [Seal.] 48-8t

**Douglas & Douglas, Wm. B. Matthews, Jr., Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Ellen Zora Bosworth, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of November, 1906. **MARY M. ANTONETTE SEAW, 3216 Prospect ave.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 14,027. Admn. [Seal.] 48-8t

**Legal Notices.**

**John Paul Earnest, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters of administration on the estate of Julia Fisher Campbell, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 24th day of December, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 27th day of November, 1906. **JOSEPH A. MCKELLIP, by John Paul Earnest, Attorney.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 13,—. Admn. [Seal.] 48-8t

**Joseph H. Stewart, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Henrietta Baker, Deceased.**

No. 13,987. Administration Docket—.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Mary Williams, it is ordered, this 28th day of November, A. D. 1906, that Cora Baker, Beulah Baker, Henry Baker, and James Baker, and all others concerned, appear in said court on Monday, the 31st day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Record once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 48-8t

**James T. Hunter, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Simeon T. Neal.**

No. 13,971. Administration Docket—.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Permelia L. Dodd, it is ordered, this 26th day of November, A. D. 1906, that Robena U. Neal, and all others concerned, appear in said court on Monday, the 31st day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 48-8t

**John B. Larner, Charles S. Hayden, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Jennie De Witt Talmage, Deceased.**

No. 14,015. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Ernest H. Pillsbury, the executor named therein, said will bearing date December 24, 1902, it is ordered, this 27th day of November, A. D. 1906, that Jessie Talmage Smith, May Mangam, Edith Donnan, Maude Talmage Wyckoff, and Frank De Witt Talmage, all of full age, and all others concerned, appear in said court on Monday, the 31st day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter, Washington Herald, and Washington Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 48-8t

**Legal Notices.****Malcolm Hufty, Solicitor**

In the Supreme Court of the District of Columbia.  
Francis E. Smith, Complainant, v. Louis H. Meyers  
et al., Defendants. Equity, No. 26,380.

The object of this suit is to establish a mechanic's lien and for sale of the property described in these proceedings. On motion of the complainant, by Malcolm Hufty, his solicitor, it is, this 27th day of November, 1906, ordered that the defendant, Fount Le Roy Elevator Company, a corporation, cause its appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day.

[Seal] HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 48-3t

**Barnard & Johnson, Attorneys**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Joannes Rochoon, Deceased.  
No. 13,998. Administration Docket, 35.

Application having been made herein for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by Marie Wagner Rochoon, it is ordered, this 23d day of November, A. D. 1906, that Blanche Rochoon and Marie Rochoon, and all others concerned, appear in said court on Wednesday, the 26th day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication

[Seal] to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 48-3t

**Barnard & Johnson, Solicitors for Complainant**  
T. Percy Myers and Gittings & Chamberlin, Solicitors  
for Defendants

In the Supreme Court of the District of Columbia.  
Ernest L. Schmidt, Complainant, v. Ada G. Earhart  
Ross et al., Defendants. In Equity, No. 25,523.

ORDER NISI.

Ralph P. Barnard, Justin Morrill Chamberlin, and T. Percy Myers, trustees herein, having reported the sale of the following lots in Ferdinand Butler's subdivision of lots in square 226 as per plat recorded in book R. L. H., at folio 146, one of the records of the surveyor's office of the District of Columbia, to wit: Lots 17 and 18 to Edwin H. Neumeier and Randolph T. Warwick for the sum of \$9.50 per square foot, there being according to said plat 2,100 square feet contained in said property, making the total purchase price \$19,950; lot 20 to Washington Nallor for the sum of \$6.00 per square foot, there being according to said plat 1,300 square feet contained in said property, making the total purchase price \$7,800; and lot 21 to Andrew B. Graham for the sum of \$6.80 per square foot, there being according to said plat 1,806 square feet contained in said property, making the total purchase price \$11,371.50, it is, this 23d day of November A. D. 1906, by the court, ordered, that the said sales be finally ratified and confirmed, unless good cause to the contrary be shown on or before the 29th day of December A. D. 1906. Provided that a copy of this order be published in The Washington Herald and The Washington Law Reporter once a week for three successive

[Seal] weeks before the aforesaid day. ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by R. P. Belew. 48-3t

**Wilton J. Lambert, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Rocco Brignole, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of November, 1906. LOUISE BRIGNOLE, 1415 Youst, N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,685. Administration. [Seal.] 48-3t

**Legal Notices.****J. Willmer Latimer, Attorney**

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Vernon C. Tasker, Deceased.  
No. 14,018. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a. to be issued to Abner Y. Leech, Jr., on said estate by Evelyn Hanna, it is ordered this 28th day of November, A. D. 1906, that Hiram P. Tasker, and all others concerned, appear in said court on Monday, the 31st day of December, A. D. 1906, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return

[Seal] day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 48-3t

**Robinson White, Attorney**

In re Estate Charles White, Deceased.

Administration Docket. No. 13,271.

ORDER OF COURT.

The above-entitled cause coming on to be heard on motion of counsel for the executors to ratify the sale of sublot numbered forty-six (46) in square numbered one hundred and seventeen (117) and sublot numbered seventeen (17) in square numbered three hundred and seven (307) in Washington, District of Columbia, as shown in report of such sale filed in this cause, and the motion considered and counsel heard, and the report of the sale as made by the said executors, being duly considered, it is this 26th day of November, 1906, ordered, adjudged, and decreed that the sale by the said executors of the said sublot numbered forty-six (46) in square numbered one hundred and seventeen (117) to James Kerr, and the sale of the said sublot numbered seventeen (17) in square numbered three hundred and seven (307) to Clifford A. Borden be ratified by the court, unless cause to the contrary be shown on or before the 26th day of December, 1906. Provided that a copy of this order be published in The Washington Law Reporter once a week for three successive weeks prior

[Seal] to the said 26th day of December, 1906. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 48-3t

**R. H. McNeill, Solicitor**

In the Supreme Court of the District of Columbia.  
Mary E. Smith, Plaintiff, v. William Henry Smith and  
Adele Blackwell, Defendants.

Equity, No. 26,301.

The object of this suit is to obtain an absolute divorce from the defendant, William Henry Smith, because of his adultery with defendant Adele Blackwell. On motion of the plaintiff it is, this 20th day of November, 1906, ordered that the defendant, Adele Blackwell, cause her appearance to be entered herein, on or before the fortieth (40) day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order shall be published once a week for three successive weeks in

[Seal] The Washington Law Reporter and The Washington Times, before said date. ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by R. P. Belew. 48-3t

**Julius I. Peyser, Attorney**

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, who were by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Herman Baumgarten, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 24th day of December, 1906, at 10 o'clock A. M., as the time, and said court room as the place for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residuum are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 26th day of November, 1906. ADA BAUMGARTEN, ARTHUR BAUMGARTEN, by Julius I. Peyser, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,977. Administration. [Seal.] 48-3t

# The Washington Law Reporter

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### Charitable Institutions; Injuries to Servant.

In *Hewitt v. Woman's Hospital Aid Association*, recently decided by the Supreme Court of New Hampshire (64 Atl., 190), it is held that a hospital conducted as a charity is liable for the negligence of its manager in failing to notify a nurse of the contagious nature of a case assigned to her. The court points out that the hospital is incorporated under a general charter, and that although it has no capital stock and made no division of profits, and all its property was devoted to charitable uses, it is liable, and cites a number of English and American cases. The court also rejected the contention that as the plaintiff was an apprentice learning a trade, she was not a servant, and that the corporation was therefore relieved of its ordinary duty to her in that capacity.

### Sales—Right to Regulate Resale and Price.

Another decision affirming the right of a manufacturer to control the price and the manner in which an article may be sold by the retailer is found in *Hartman v. Jno. R. Park & Sons Co.*, 145 Fed. Rep. 358. In that case the United States Circuit Court for the Eastern District of Kentucky holds that contracts between the manufacturer and wholesalers to sell at a certain price, and only to retail dealers designated by the manufacturer, should be sustained. It was contended for the defendant that the contracts were unlawful, as being in restraint

of trade; but this contention the court disposes of by a holding that to be unlawful the restraint must be unreasonable.

### Carriers—Who Are Passengers?

A decision of interest upon the question whether a person is being carried as a passenger is made by the Supreme Judicial Court of Massachusetts in the case of *Fitzmaurice v. New York, New Haven and Hartford Railroad Company*, 78 N. E., 418. In that case it appeared the person injured as the result of a collision, had obtained from the defendant a ticket by presenting to its agent a forged certificate that she was under 18 and a pupil in a certain school, the railroad company having contracted to carry pupils at reduced rates. The holding of the court is to the effect that the carriage of the person was brought about by fraud and that she was not a passenger.

### Dangerous Machinery—Liability of Master.

In *Creswell v. United States Shirt and Collar Co.*, recently decided by the appellate division of the Supreme Court of New York (100 N. Y. Supp., 497), it is held that an employer is not liable for an injury to an employee caused by the flying back of the lever on a printing press and so startling the employee operating it that he involuntarily thrust his hand into the machinery and was injured. In so holding the court makes the following statement of the law on the subject of negligence by employers: "Failure to guard against that which has never occurred and which is very unlikely to occur, and which does not naturally suggest itself to prudent men as something which should be guarded against, is not negligence." In the case in question, no accident of the kind having occurred in nine years' use of the press, the court holds that the master was not negligent.

### The Case of Albert T. Patrick.

The decision of Governor Higgins, of New York, to commute the sentence of Patrick to life imprisonment will be received with satisfaction by all those who have watched the progress of his fight for his life. Convicted of murder on the evidence of a witness who admitted that he himself was the actual perpetrator of the crime, though claiming to have acted under the control of Patrick, and who purchased immunity from prosecution by his testimony; with three of the seven judges of the Court of Appeals of New York holding that serious errors were committed by the court in his trial, the action of the Governor is in the interest of justice. Patrick has shown himself a man of brilliant parts, the remarkable fight for his life having in large measure been directed from his prison cell. The commutation of his sentence will probably not end his efforts for freedom, and there are many who would find gratification in the fact should his innocence of the crime be established.

## Court of Appeals of the District of Columbia.

J. BARTON MILLER, APPELLANT,

v.

JOHN E. PAYNE, EXECUTOR ET AL.

WILLS; EQUITABLE CONVERSION; ADVANCEMENTS; ADEMPITION; RES GESTÆ; ASSIGNMENT OF INTEREST.

1. Where a testatrix, by her will, directs that her real estate be sold one year after her death and the proceeds distributed among certain persons named, such direction operates as an equitable conversion of the real estate.
2. And such conversion is not affected by the fact that on a sale of the property made within the year the heirs, for whose benefit the conversion was directed, and not the executor, executed the deeds, a conveyance by the heirs, under such circumstances, not indicating an intention on their part to take the property in its original state, and the proceeds of sale being retained by the executor for distribution as though he himself had made the conveyance.
3. Where a testatrix, by her will, gave to one of her heirs a one-fifth interest in the proceeds of real estate directed to be sold, and subsequently to the date of the will she advanced to him certain sums with the clearly understood intention that these advancements should be charged against his share of the estate, such advancements being more in amount than his interest in the proceeds of the real estate, operated an ademption of the bequest to him.
4. Declarations by the testatrix, at the time of making such advancements, that they were to be deducted from the share of the person advanced in her estate, are part of the res gestæ and admissible on the question of her intent in making the gifts.
5. The grantee in a deed made by the person receiving such advancements, after the death of testatrix, purporting to convey his one-fifth interest in the estate, takes only such right as his grantor had, and where the sums advanced to the grantor exceed his interest in the estate, the grantee will take nothing by his deed.

No. 1682. Decided December 4, 1906.

APPEAL from an order of the Supreme Court of the District of Columbia, Probate No. 12,371, overruling exceptions to an auditor's report. Affirmed.

*Mr. Jesse H. Wilson, Mr. Jesse H. Wilson, Jr., and Mr. John Ridout*, for the appellant.

*Mr. Smith Thompson, Jr., and Mr. Chas. T. Hendler* for the appellees.

Mr. Justice ROBB delivered the opinion of the Court:

This is an appeal from an order of the Supreme Court of the District of Columbia, holding a Probate Court, overruling exceptions to and confirming the auditor's report.

Priscilla R. Payne, widow, died July 25, 1904. She was survived by five children, and left the following will:

"WASHINGTON, D. C., Sept. 6, 1894.

Know all men by these presents that I Priscilla R. Payne of Washington District of Columbia being of sound and disposing mind and memory do make publish and declare this instrument to be my last will and testament I give, devise, and bequest all my real property described as follows lot "39, square 55," situated on Dumbarton Avenue West Washington "and lot" 79 square 72, situated on Dumbarton Avenue West Washington;" this property to be sold one year after my death and the proceeds to be divided equally between my children "John E. Payne, "Lorraine E. Holder"

"Harry S. Payne," "Walter W. Payne, "Lily May Payne.

I hereby appoint my son John E. Payne Executor of this will without bond.

In witness whereof I hereunto set my hand and seal this Sixth day of September, A. D. 1894.

PRISCILLA R. PAYNE."

In October, 1898, the son Walter having previously expressed an intention to go away, his mother to enable him to purchase a half interest in a hotel at Upper Marlboro, Md., and thereby remain comparatively near her, borrowed from the American Security & Trust Co. \$1,100, giving as security a deed of trust on part of her District real estate. The proceeds of this loan, amounting to \$1,031.30 she turned over to Walter, taking from him no evidence whatever of indebtedness. With this money he in fact purchased a half interest in said hotel. In June, 1902, Mrs. Payne borrowed from the Washington Six Per Cent. Permanent Building Association the sum of \$1,800, giving the same security as before. Out of this second loan she liquidated her indebtedness to the American Security & Trust Co., and turned over to Walter the balance, \$539.75, for use in his business. She took no security or evidence of indebtedness from him for this amount. She subsequently borrowed further sums from the First Cooperative Building Association of Georgetown, and turned over to Walter, without evidence of indebtedness, the proceeds of these loans aggregating \$645.

After her death her will was duly admitted to probate and record, and letters testamentary issued to John E. Payne on September 6, 1904. On March 21, 1905, the executor filed "an inventory of money and debts due to deceased" wherein he stated that W. W. Payne was indebted to the estate in the sum of \$2,588.75.

On November 26, 1904, four months after the death of his mother, Walter W. Payne, executed to J. Barton Miller, appellant, in consideration of \$10, a deed of his right, title, and interest in and to one undivided fifth of all the real, personal, and mixed estate of which the said Priscilla R. Payne died seized and possessed.

In accordance with the direction of the will the real estate was sold, the heirs, however, executing the deeds, Miller signing for Walter. The proceeds of the first sale were retained by the executor, and some contention having arisen as to the rights of Miller, the proceeds of the second sale were placed in the hands of Mr. Jesse H. Wilson and Mr. Smith Thompson, Jr., as trustees to be held until Miller's rights should be determined. On November 13, 1905, the court referred the matter to the auditor for the purpose of stating the account of the executor, and of making distribution of the estate to the parties entitled thereto, and in so doing to hear evidence on behalf of the interested parties. Testimony was taken, and the auditor filed his report on March 31, 1906. In this report, after setting forth the facts surrounding the procurement by Mrs. Payne of the above sums of money for Walter, the auditor said:

"These several deliveries of money by the testatrix to the said Walter W. Payne were made several years after the making of her will, and the proof taken in this reference clearly establishes her intention that these deliveries

were intended as advancements on account of his share in the estate, and to be adjusted in such manner as to equalize the distributive portions of all the devisees. It is further established that Walter was informed on that intention and condition by the testatrix, and after her death the making of the said advancements was admitted by him. . . . Upon the conditions appearing in the proof and in the records of the case I feel bound to find that J. Barton Miller, in accepting a conveyance of the interest of Walter W. Payne took it, charged with advancements made by the testatrix, and I have stated the distribution in this account accordingly."

The first contention of the appellant is, that there was no conversion of the real estate. This contention is obviously untenable, for the will expressly provided that the property should be sold one year after the death of the testatrix, and the *proceeds* divided between her children. That such a provision operates as an equitable conversion is too well established to admit of argument. *Iglehart v. Iglehart*, 26 App. D. C., 209; 33 Wash. Law Rep., 711; *Smithers v. Hooper*, 23 Md., 273; *Reiff v. Strite*, 54 Md., 298; *Forsyth v. Forsyth*, 46 N. J. Eq., 400; *In re Tillman*, 86 Hun, 47.

And, in our view of the case, this conversion is in no way affected by the fact that the heirs instead of the executor executed the deeds, since the *proceeds* of the sales were treated exactly as they would have been had the executor himself conveyed the property. Such a conveyance in the circumstances does not indicate an intention on the part of the heirs to take the property in its original state, but merely an intention on their part to hasten the conversion by assisting the executor in carrying out the provisions of the will. Miller urged these sales because he was desirous of having the real estate speedily converted into money. His real estate firm negotiated each sale, and for so doing received a commission which was deducted from the proceeds of each. Moreover, he was asked during the hearing before the auditor whether he had made any claim to any part of the proceeds of the first sale, and replied that he "accepted a statement from Mr. Thompson (counsel for the executor) in the beginning that it would not be proper to *distribute this money until the administration year was up*." All this negatives the idea of a reconversion. The will directed the sale of the realty in one year after the death of Mrs. Payne, and, while this operated in law as an immediate conversion, it did not authorize the executor to execute a deed until a year had elapsed. The sales, however, were actually made within one year, and this is probably one reason why the heirs were required to sign the deed. Certainly a reconversion can not be assumed from the bare fact that the heirs joined in the conveyance, when the executor was permitted to retain the proceeds of such sale for distribution as though he himself had executed the conveyance.

We see no merit in the second contention of appellant that the above gifts to Walter did not operate as an ademption of his legacy. *Wallace v. Dubois*, 65 Md., 163; 2 Woerner's Am. Law of Adm., 2d ed., sec. 448; *Williams on Executors*, 1334; *Van Houton v. Post*, 33 N. J.

Eq., 709; *Richards v. Humphries*, 32 Mass., 133; *Benjamin v. Dimmick*, 4 Redf. Sur., 7; *Appeal of Keifer*, 5 Pa. Co. Court R., 568.

Section 1630 of the Code has been referred to, but we find it unnecessary to determine whether its provisions govern the interpretation of this will or not. Said section is as follows: "A provision for or advancement to any person shall be deemed a satisfaction, in whole or in part, of a devise or bequest to such person contained in a previous will if it would be so deemed in case the devisee or legatee were the child of the testator; and, whether he be a child or not, it shall be so deemed in all cases in which it shall appear from parol or other evidence to be so intended." The first clause of this section merely extends the common law rule that previously obtained in this District, and places devisees and legatees, to whom the testator does not stand in loco parentis, upon the same basis with children and grandchildren. The second clause, apparently, was intended to embrace within the common law rule gifts, whether specific or general, and whether for a fixed or an uncertain sum, when it appears "from parol or other evidence" that such was the intention of the testator.

In this case the bequest is from a person in loco parentis, and it appears from both parol and other evidence that the advancements were intended as an ademption of the legacy, and, therefore, it is immaterial whether the above provisions of the Code are applicable or not. As before stated, Mrs. Payne, in order to establish her son near her, advanced to him nearly \$2,500 with which he purchased and conducted a half interest in a hotel property. She took no security or evidence of indebtedness from him, and repeatedly stated to various witnesses during the time these payments were being made and shortly thereafter, that the money given Walter would be deducted from his share of her estate at her death. Declarations made under these circumstances form part of the *res gestæ*, and are, therefore, admissible on the question of the intent of the testatrix. *Hine v. Hine*, 39 Barb., 507; *Rogers v. French*, 19 Ga., 316; *Graves v. Spedden*, 46 Md., 527; *Dilley v. Love*, 61 Md., 603; *Van Houton v. Post*, 32 N. J. Eq., 709. It would be contrary to every principle of equity and subversive of justice to hold, under the facts surrounding this case, that Walter W. Payne, having previously obtained from his mother prior to her death and subsequent to the making of her will, sums of money aggregating substantially one-half of her estate, is now entitled to one-fifth of the remainder. As the will discloses, her estate at the time these advancements to Walter were made was of uncertain value, consisting almost entirely of realty. It may well be, therefore, that she then had no idea she was giving Walter so much in excess of his portion. That the relation of debtor and creditor existed between them is disproved by the utter absence of any evidence of indebtedness, or any evidence tending to show such relation.

Holding, as we do, that this will effected an equitable conversion of the realty, it follows that Miller's deed was in effect merely an assignment of whatever interest Walter had as a leg-

atee. The intervention of a third party under such conditions does not change the status of the case in any way, for he can claim no higher right than was assigned him. He took a one-fifth interest subject to the advancements made to Walter, and, if those advancements exceed such interest, it is his misfortune. In accepting such an assignment without waiting until the executor had stated his account he took a speculator's chance, and must not now complain because he lost. As was well said in *Hopkins v. Thompson*, 93 Mo. App., 401: "It is not in the power of a third person to impair or embarrass the personal representative in the settlement of an estate by dealing with the heirs upon the assumption that their interest is of a fixed or certain character. Nor can the other heirs be deprived of some portion of their estate by the intervention or intermeddling of a stranger so as to destroy the equality of descent and distribution."

In the present case the will converted the realty into personality; the gifts of money to Walter exceeded his distributive share, and were intended when made to take the place of and did in law adeem his legacy; therefore, Miller took nothing by his assignment; and the order must be affirmed with costs. Affirmed.

ROBERT W. BROWN, EXECUTOR, APPELLANT,  
v.

THE SAVINGS BANK OF THE GRAND  
FOUNTAIN, U. O. T. R.

PLEADING; PLEA TO JURISDICTION; ISSUE OF FACT  
GENERAL EXCEPTION.

1. To a plea to the jurisdiction setting up that the defendant corporation had no office, agent, or representative in this District, plaintiff replied that the contracts sued on were made in this District; and issue joined thereon was adjudged in favor of plaintiff. The trial court allowed defendant to plead to the merits within a time fixed, to which action plaintiff noted a general exception. Defendant did so plead, and issue was joined which, after trial, was adjudged in favor of defendant. Held, that the general exception noted by plaintiff was not sufficient to authorize him to assign as error that the trial court erred in not entering judgment in his favor and assessing damages after finding the issue upon the plea to the jurisdiction in his favor; and the judgment for defendant affirmed.
2. An objection will generally not afterwards avail the party raising it unless it states the ground upon which it is based and points out clearly the errors complained of in order that the court may be given an opportunity to correct them.

No. 1724. Decided November 21, 1906.

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 46,800, entered upon a verdict in an action on a stock certificate. Affirmed.

Mr. A. A. Birney and Mr. Joseph H. Stewart for the appellant.

Mr. W. J. Lambert and Mr. J. S. Easby-Smith for the appellee.

Mr. Justice ROBB delivered the opinion of the Court:

The appellant, as plaintiff below, brought suit in the District of Columbia against appellee, a Virginia corporation, for the redemption of 57 shares of its stock at \$5 per share, which he

claimed was redeemable at the death of his testatrix, and for dividends on such stock amounting to \$171. The defendant filed a plea in abatement to the jurisdiction of the court on the ground that it had no branch office, business, agent, or representative within the jurisdiction of the District of Columbia. To this plaintiff replied that the contracts sued upon were entered into in the District of Columbia, and issue was joined upon this replication. A jury was waived, and the court determined the issue thus made in favor of the plaintiff.

"Thereupon [quoting from the record] the defendant's motion filed herein for a rehearing of this cause coming on to be heard, it is ordered that said motion be and hereby is overruled; whereupon leave is hereby granted the defendant to plead to the merits within twenty-four hours, upon the payment of all costs to date in this cause, to which the plaintiff notes an exception, and the cause is set down for trial on the 14th day of June, 1906."

No motion for judgment was made by the plaintiff. On June 9th, and within the time allowed by the court for that purpose, the defendant filed its pleas to the merits, and in its affidavit of defense set forth that it had paid and redeemed the certificates in question during the life-time of plaintiff's testatrix. On June 11th the plaintiff joined issue on these pleas to the merits, and thereafter a trial was had before a jury, and a verdict returned in favor of the defendant. From this verdict and the judgment entered thereon an appeal was noted.

It is now urged by appellant that the court erred in not entering a judgment in favor of the plaintiff and assessing his damages after finding the issue upon the plea in abatement in his favor. We think the mere statement of the case demonstrates that the appellant is not in a position to insist upon this assignment of error. It may be conceded that under the common law the finding in favor of the plaintiff of an issue of fact raised by a plea in abatement entitles the plaintiff to a judgment on the merits. Whether the provisions of the Code with respect to amendments modifies this rule of the common law, we need not stop to inquire, for the reason that an objection will not afterwards avail the party raising it unless it states the grounds upon which it is based and points out clearly the errors complained of in order that the court may be given an opportunity to correct them. Enc. P. & P., vol. 8, p. 163.

In the case of *Thaw v. Ritchie*, 5 Mackey, 228, the court said: "The last bill of exceptions is peculiar. It shows that two instructions were asked on behalf of the defendant, both of which were granted against the plaintiff's objection, and at the same time the justice stated that there was no substantial disagreement between the parties as to the facts, and that he held that the plaintiff could not prevail against the title which the defendant furnished, and instructed the jury to find for the defendant, to which the plaintiff excepted. It does not appear whether the exception was to the granting of the instructions prayed or to the statement that there was no disagreement as to the facts, or the instruction that the plaintiff could not prevail against the title furnished by the defend-

ant, or the final peremptory instruction to find for defendant.

"We are not bound to notice this exception, and there is less occasion for it, because after the previous ruling below, which we have sustained, it could do no harm if technically erroneous." See, also, *Langdon v. Evans*, 3 Mackey, 1; *Oureton v. Dargan*, 16 S. C., 619; *The Penna. Co. v. Horton*, 132 Ind., 189; *Insurance Co. v. Sea*, 21 Wall., 162; *Herman v. Jeffries*, 4 Mont., 513.

Appellant contends for a strict enforcement of the technical rules of common law pleading, and he must, therefore, show that he has omitted nothing in laying the foundation for his contention. The ruling upon which this assignment of error is based, and to which a general exception only was noted, granted the appellee leave "to plead to the merits within twenty-four hours, upon the payment of all costs to date in this cause." Whether the exception was to the substance of the ruling, or to the time given within which to plead over, or to the terms imposed, does not appear. Neither are we able to say from what followed that the exception related to the substance of the ruling, as no motion was made for judgment, and there was joinder of issue on the pleas subsequently filed, and an actual trial before a jury, all of which would tend rather to negative the idea that the exception was to the substance and not the form and conditions of the court's ruling.

The attention of the court should have been specifically directed to the point now made at the time leave was given to plead to the merits and before appellant joined issue and went to trial on the merits. Under his present view of the case appellant, by joining issue on the merits, caused the court to go through an idle ceremony when a jury trial was had to determine that issue. This demonstrates the importance and necessity of reasonably directing the court's attention to the specific objection raised, in order that an opportunity may be given the court to rule thereon. The appellant in this case contented himself with making a general objection, did not move for judgment, and did not complain further, until a jury after a trial on the merits, in which he had participated, found against him.

Without stopping to inquire whether the acts of appellant, subsequent to the ruling of the court permitting appellee to plead to the merits, constituted a waiver of his objection to the ruling, we hold that the objection was too general to raise the question contained in this assignment of error, and, therefore, affirm the judgment with costs.

Affirmed.

**Beneficial Associations.**—The authority of officers of subordinate lodges of benevolent societies, by reason merely of such office, to waive any of the provisions of the rules and regulations of the order which enter into and form a part of the contract of membership, is denied in *Royal Highlanders v. Scovill* (Neb.), 4 L. R. A. (N. S.), 421.

**Supreme Court of the District of Columbia,  
SITTING AS A PROBATE COURT.**

**IN RE WILL OF JOSEPHINE R. SHELLEY.**

**WILLS; ATTESTING WITNESSES; REQUEST BY TESTATRIX TO SIGN; MENTAL CAPACITY; EVIDENCE; RES GESTÆ; UNDUE INFLUENCE; BURDEN OF PROOF.**

1. Under Sec. 1626 of the Code, it is not necessary that a testator shall request the subscribing witnesses to his will to sign.
2. Even were such request necessary, and the witness has forgotten that it was made, the attestation clause, reciting such request, would supply the proof necessary to establish due execution.
3. In a will contest, where the issue of mental capacity is raised, the caveatees are entitled to the benefit of the presumption that the testator was of sound mind when the will was executed; and the burden of proof to show want of the requisite mental capacity is on the caveators.
4. The evidence in this case reviewed and held not to warrant the jury in finding that deceased was not of sound and disposing mind; and a verdict on that issue in favor of the will directed.
5. Declarations of the testatrix, admissible as evidence on the question of mental capacity, are to be excluded from consideration in passing upon the issue of whether or not the will was procured by undue influence.
6. To avoid a will on the ground of undue influence, the influence must be such as dominates the will of the testator and substitutes in its place the will of the person exercising it; and the jury must find that such undue influence existed, and that it operated upon and controlled the testator in the act of making the will and at the time of its execution.
7. The party alleging the existence of such undue influence has the burden of proof, and must produce such evidence as will enable the jury, by fair inference and reasonable consideration, to find his allegation substantially true, before the question can properly be submitted to the jury.
8. Statements by a testatrix to her physician about the will at the time of its execution are admissible as part of the res gestæ.
9. The evidence reviewed and held not to warrant a finding against the will on the issue of undue influence; and a verdict on that issue in favor of the will directed.

No. 12,388, Administration Docket. Decided December 8, 1906.

**HEARING**, in a will contest, on a motion by caveatees to direct a verdict in favor of the will. Verdict directed.

*Messrs. Worthington, Heald & Frailey* for the caveators.

*Mr. Samuel Maddox* and *Mr. H. Prescott Gately* for the caveatees.

Mr. Justice BARNARD delivered the opinion of the Court:

In this case a petition was filed by Edward T. Semans and the American Security and Trust Company, the executors named therein, for the probate of a paper writing dated July 26, 1904, as the last will of Josephine R. Shelley, who died August 8, 1904. A caveat was filed by Charles R. Sewell, the only surviving brother of said decedent, objecting to the probate of said paper writing, and averring that it was not her will.

Thereupon three issues were framed for trial by jury, as follows:

1. Was the paper writing, dated the 26th day of July, 1904, which was filed in this case on the 18th day of August, 1904, executed by Josephine R. Shelley in due form of law as her last will and testament?
2. If the said Josephine R. Shelley executed said instrument, was she, at the time of such



execution, of sound and disposing mind, and capable of executing a valid deed and contract?

3. If the said Josephine R. Shelley executed the said instrument, was her execution of the same procured by undue influence exercised upon her by Edward T. Semans, or any other person or persons?

These issues came on for trial, and, after the testimony for both parties was closed, the attorney for the caveatee moved the court to instruct the jury to return a verdict in favor of the will, by answering the first and second issues in the affirmative, and the third in the negative.

Counsel for the caveator claim that the motion of the caveatee should be overruled, and all three of the issues submitted to the jury for its consideration and verdict.

The question I am called upon to decide is this: Is there sufficient evidence in the case to support a verdict against the will as to all three issues? Or as to either one or more of the issues?

The paper writing appears on its face to be executed in due form. The attestation clause is similar to that usually employed in wills, and the evidence is undisputed that said clause was read over in the presence of the testatrix and the witnesses, and signed by the witnesses in her presence, directly after she signed her name to the will; and one of the attesting witnesses states that they signed at her expressed request. The other witness states, in effect, substantially the same thing, but instead of stating that the request was directly expressed in words, uses language that clearly indicates that the testatrix, by her action, desired the will to be witnessed by them. But if it was essential under our law that an express request should be made, and the attesting witness had forgotten that such request had been made by the testatrix, the attestation clause, reciting such request, would supply the proof necessary to establish due execution. 30 Am. & Eng. Enc. of Law (2d ed.), 594, '5.

Under our statute, however, it is not required that there should be an express request of the testator, asking the witnesses to sign. The statute (sec. 1626 of the Code), provides that: "All wills and testaments shall be in writing and signed by the testator, or by some other person in his presence and by his express directions, and shall be attested and subscribed in the presence of the said testator by at least two credible witnesses, or else they shall be utterly void and of no effect, and moreover, no devise or bequest, or any clause thereof, shall be revocable otherwise than by some other will or codicil in writing or other writing declaring the same, or by burning, canceling, tearing, or obliterating the same by the testator himself or in his presence and by his direction and consent; but all devises and bequests shall remain and continue in force until the same be burned canceled, torn, or obliterated by the testator or by his direction in the manner aforesaid, or unless the same be altered or revoked by some other will, testament, or codicil in writing, or other writing of the testator signed in the presence of at least two witnesses attesting the same, any former law or usage to the contrary notwithstanding."

Taking the evidence on the subject of execu-

tion of the paper as an entirety, I am forced to the conclusion that there is no ground for the jury to base a verdict upon against the will in answering the first issue, and I will therefore grant the motion as to that issue, and direct the jury to answer it in the affirmative.

On the second issue as to testamentary capacity, the caveatee has the benefit of the presumption that the testatrix was of sound mind when the paper was executed, and the burden of proof to show want of mental ability to make a valid will is therefore cast upon the caveator. Has he made out such a case by the evidence as to warrant and support a verdict of the jury that she was not of sound and disposing mind on July 26, 1904, when the will was signed? If not, the court should direct a verdict for the caveatee; but if, by any proper inferences which a jury may be allowed to draw from facts proven, a verdict against the will as to this issue could be allowed to stand, then this issue should be submitted to the jury.

No witness who saw Mrs. Shelley at or near the date of the will, has said she was not of sound mind. No medical testimony has been offered, except that of Dr. Johnson, one of the attesting witnesses, and his testimony is clear and positive that she was mentally sound.

A large number of letters from the testatrix, and many statements alleged to have been made by her, have been given in evidence, for the purpose of throwing light on the character of her mind as to soundness or unsoundness, but none of these indicate any failure of intellectual faculties. It is claimed by counsel for the caveator that the correspondence between the brother and sister proves that very friendly relations existed between them down to a short time before the date of the will. That then the sister wrote her brother such an unfriendly letter, that it would show that her mind had become disordered to such an extent as to warrant the jury in finding her to be wanting in testamentary capacity. I think no such inference can properly be drawn from that letter. It evidently refers to matters actually occurring in her previous history; of differences between her and her brother which he alone understands. His testimony clearly indicates that fact. The impression made upon my mind by this correspondence and the testimony of the brother, was that their relations were more or less strained; that while they were polite to each other, and wrote in affectionate terms, they were not greatly attached to each other, and generally dealt with each other at arms length. When the testatrix married Mr. Shelley, it was against the wishes of her family, and they never forgave him, and did not allow him to enter the house at the time of the death of her father. When Mr. Shelley died, none of her family seem to have aided or sympathized with her.

She always lived away from her relatives after her marriage. Her older brother, Wynn R. Sewell, was given only one dollar by the former will signed by her on the 5th day of January, 1895, and there are other evidences in her letters of lack of sisterly feeling on her part toward him. The caveator made some rather formal and brief visits to her here some years after her husband's death, but she never visited

him, or his wife, and his wife never visited her. The caveator never informed his sister of his marriage until about a year afterward. On one occasion at least, the sister sent her brother a small check with which to buy something for a present for himself, but he would not accept the check, and sent it back, because, as he says, he did not want to be under obligation to her, although at other times there were some small presents exchanged between them. When Mrs. Sewell, the mother of Mrs. Shelley, died, and the estate was divided up, there seems to have been some friction between the two brothers and the sister, and court proceedings were necessary to effect a partition. All through this time Mrs. Shelley continued to live in Washington, away from her relatives.

The caveatee represented her in most, if not all, of her business arrangements, in settling up with the two brothers in the division of the estate of the mother, and in the purchase and care of most of her real estate in this city; and her relations with him seem to have been continuously friendly for many years.

There is nothing in the evidence, as I see it, to warrant the jury in finding that the said decedent was not of sound and disposing mind, and I am therefore disposed to grant the motion as to the second issue, and will direct the jury to answer that in the affirmative.

The remaining issue involves the question of undue influence, and is more difficult of a satisfactory solution than the other two.

In considering this question it is necessary to disregard the many statements of the testatrix, both written and verbal, which were admissible as evidence on the issue of mental capacity, but which are incompetent to prove the truth of any facts narrated therein, because they only amount to hearsay evidence, and are properly excluded on all other issues as such, under the authority of the Supreme Court of the United States in the Holt will case. With all such statements excluded the evidence bearing on this issue is somewhat meager, and almost wholly circumstantial. It consists mainly in the testimony showing the relation of the parties, the opportunity for exercising undue influence, and the contents of the will.

In order to reach a just conclusion as to whether or not this paper is the will of the decedent, the surrounding circumstances must be carefully considered.

It appears that Mrs. Shelley was, either by her own choice or from some other cause, almost alone in the latter years of her life. It does not appear that she had any church membership, or society, or other social acquaintances or friends, except Mrs. Drinkard, with whom she had rooms for some time prior to 1893. The caveatee seems to have been her sole male friend, her general business agent and adviser, and the one upon whom she relied for aid and company in her last illness. She first met him while her husband was living and while his wife was living, but does not appear to have become intimately acquainted with him until after her husband's death, when he successfully prosecuted some pension claims for her, on one of which she received some \$3,000, and on the other a pension, as widow, of \$17 per month. After Mrs. Shelley bought the house on Eighth

street, some time in 1895, Mr. Semans took a room and board there. He continued to live there, evidently by mutual agreement, until Mrs. Shelley's death on August 8, 1904, with the exception of a few months in 1900, when he was away in New York.

A will signed by Mrs. Shelley on January 5, 1895, and put in evidence by the caveatee without objection, gave her estate largely to the parties now contesting this will, but it is claimed the portion given to the caveatee by that will was greater in proportion to that given to the caveator than under this last will. That will was made before the parties lived in the same house, but the circumstances of its execution are not given in evidence, except that the caveatee testifies that he knew nothing of the terms or of the existence of that will until the day this last will was executed. It appears to have been witnessed by Doctor Rayburn and two other parties, but none of the witnesses were called to the stand to prove its execution. That will recites, as an apparent reason for the devises and bequests therein to Mr. Semans, the following: "That for and in consideration of the legal services rendered and untiring devotion to my financial interests, covering a period of many years, I give, devise, and bequeath to Edward T. Semans," etc. That will was evidently made at a time when Mrs. Shelley was in health and vigor; and in the absence of proof to the contrary, I must believe it was her own will, and if it was it shows that she had entertained the testamentary scheme for many years of leaving her estate largely to the two men who are beneficiaries under the will now being contested.

That fact, taken in connection with the testimony of Doctor Johnson, and of Mr. McKenney, who are in every way entitled to belief, goes a long way toward convincing me that the present will is none other than that of Mrs. Shelley. When the wilful nature of the testatrix is considered, that she had her own way in marrying Mr. Shelley, against the protest of all her family; that she retained personal dominion over her property and household affairs until she died; and that notwithstanding Doctor Johnson warned her of her liability to sudden death soon after his first call in June, she still refrained from making her new will until she felt herself that death was not far off; and that she always lived her life after marriage, independent of her relatives, convinces me that this paper writing is her valid will, by which she wishes her estate to be disposed of.

She may have sinned against the orderly conventions and rules of good society, by her mode of life, but if so, the law does not for that reason deprive her of the dominion over her property, and the right to dispose of it by will as she alone chooses; and unless that fact throws light on the question of undue influence, it has no proper place in solving this question. At most, it might only be urged as a circumstance that gave opportunity for the caveatee to exercise undue influence. What amounts to undue influence has been often defined by the courts, and in various terms. It is such influence as dominates the will of the testator, and substitutes in place of his will the will of the person exercising undue influence.

In order to sustain a verdict against a will on this ground, it is necessary for the jury to find from the evidence that such undue influence existed; and that it operated upon and controlled the testator in the act of making the will, and at the time of its execution.

It must be an influence that deprives the testator of his free agency; such as he is too weak to resist, and such as renders the instrument not his free and unrestrained act.

The caveator in his answer and caveat, avers that the will in this case "was procured by the undue influence, importunities, fraud, and circumvention of the petitioner Edward T. Semans, or of other persons to this respondent unknown, so that the said paper writing expresses the wishes and intentions, not of the said decedent, but of the said Edward T. Semans."

On the issue framed on this pleading, the caveator has the burden of proof and must bring such evidence as will enable a jury, by fair inference and reasonable consideration, to find that his allegation is substantially true, before the question can properly be submitted to the jury for its verdict.

As Mr. Justice Brewer said in the case of *Beyer v. Le Fevre*, 186 U. S., 114: 30 Wash. Law Rep., 359:

"We wish it distinctly understood to be the rule of the Federal courts, that the will of a person found to be possessed of sound mind and memory is not to be set aside on evidence tending to show only a possibility or suspicion of undue influence. The expressed intentions of the testator should not be thwarted without clear reason therefor."

The exertion of an honest influence by persuasion or moderate, or reasonable importunity, will not invalidate a will. The kind of influence induced by the affection of the testator for the beneficiary named in a will, can not be undue influence. It must be an influence born of fear, or a desire for peace, or from persistent importunity, or some other feeling other than affection, and which he is unable under the circumstances of the case to resist, although he desires to do so. The test is this: Does the paper he executes as a will express the testator's own honest wishes? Or does it express something contrary to his own wishes, because of the unlawful control that some one else exercises over his mind, in the act of making the will? While the will itself, after its execution is proven, is competent evidence, there is nothing in it that shows it to be the product of any other mind than that of the testatrix. Under the circumstances, it seems to be only a natural will. If it was an unreasonable or unnatural will, still that alone would not justify a finding that it was the product of undue influence, for every sane person of full age can leave his property to strangers, if he so desires. He is the rightful judge as to who shall succeed to his possessions when his ownership terminates by death, whether the court or jury should agree with him or not.

Mrs. Shelley talked freely with her physician about the will at the time of its execution, and such statements as she then made to him, are competent evidence as part of the *res gestae*. *Throckmorton v. Holt*, 180 U. S., 552: 29 Wash. Law Rep., 221.

In these statements, as I understand the testimony, she told Dr. Johnson that she anticipated there might be a contest over her will, and that was her reason for asking him to be a witness. That fact would cause the doctor to pay closer attention to the condition of her mind, and also to any circumstances which would or might indicate any undue influence, or pressure on her to make the will in any particular manner; and it shows persistence on her part to have her own way, even at the risk of a contest. His evidence clearly shows that she knew what the paper was, and that it expressed what she herself wanted to do to direct the ownership of her property after her death as she desired it to be.

Counsel for the caveator have called attention to certain other circumstances which they claim throw light on the question of undue influence and which they contend are sufficient to require the court to submit the case to the jury. They urge strongly that the confidential relations between the testatrix and Mr. Semans for many years; their dealings, as shown by the checks, check-stubs, and accounts in evidence; his manner of conducting the funeral and notifying relatives of her death; the exaggerated tone of the letter to Miss Reeves, describing the character of her funeral, and perhaps some other circumstances, are all evidences which would authorize a verdict of the jury against the will.

I think most of these are of the character of matters to which Mr. Justice Brewer refers in the *Beyer* case as those that are often pressed upon the court or jury in the trial of such cases as this, where the testator can not be heard, and which he calls "very trifling matters." I have, however, carefully considered these facts and circumstances and the arguments of counsel in the light of the other testimony and conceded facts in the case, and I am convinced that there is not sufficient competent evidence to go to the jury to warrant them in finding a verdict against the will on this issue.

In this conclusion I have been largely influenced by the testimony of the caveator himself. He says his sister would not accept his advice; that he usually stopped at a hotel when he came to visit her, because he did not like her style of living or housekeeping; that he was suspicious of her, and when here on his last visit in November, 1903, he stayed one night at her house, and he then looked carefully to see if there were any signs of a man stopping about the place; that he opposed his mother coming to Washington to visit his sister and had words with his sister about that; that he and all the family opposed his sister in her marriage to Mr. Shelley; that the mother's estate was settled by proceedings in court, and that she cared nothing about him or his affairs, so that it was a matter of indifference to him or to her either whether she knew of his marriage for a year or not.

All these facts go to show that she evidently resented his attempt, as her younger brother, to advise or control her, or to rule her by dictation or criticism as to her manner of life and conduct; and this feeling of resentment and independence of him and the other members of her family may have led her to make her will

in the way she did. She evidently retained her pride and confidence in her own capacity to judge as to her personal and property affairs, without asking anything from her brother; and his testimony clearly indicates that such was the fact.

On the whole case, I am disposed to think the evidence requires that the court should direct a verdict sustaining the will on all the issues, and the motion of the caveatee to that effect will therefore be granted.

#### Contracts.

A telegram to a bidder for public work, "You are low bidder. Come on morning train," is held, in *Cedar Rapids Lumber Co. v. Fisher* (Iowa), 4 L. R. A. (N. S.), 177, not to conclude a contract with him.

A contract between an attorney and client for services to be rendered by the former is held, in *Stroemer v. Van Orsdel* (Neb.), 4 L. R. A. (N. S.), 212, not to be necessarily invalid because a part of the services to be rendered is the procurement of legislative action, nor because such contract provides for a contingent fee.

The mere denial of a contract by one against whom it is sought to be enforced is held, in *Sprague v. Jessup* (Or.), 4 L. R. A. (N. S.), 410, not to prevent its specific enforcement if the court is satisfied of the truth of the allegations of the complaint.

A parol contract by which two persons enter into a partnership to purchase real estate, one to furnish the money and take the title, and convey a half interest to the other upon receiving his share of the purchase price, is held, in *Scheuer v. Cochem* (Wis.), 4 L. R. A. (N. S.), 427, to be void under the Statute of Frauds.

Where a written contract, entered into between a purchaser of certain goods and a person who signed for the seller, contained a provision that the contract "shall only be considered binding on the seller when signed by one or more of its officers;" and it does not appear that it was ever so signed, or that there was any consideration for the promise of the purchaser except the contemplated mutual obligations to be assumed by the seller, it is held, in *Atlanta Buggy Co. v. Hess Spring & Axle Co.* (Ga.), 4 L. R. A. (N. S.), 431, that the contract was not binding on either party, and the purchaser might withdraw from it before it became mutually binding by acceptance in the manner agreed upon; and subsequent ratification of the contract by the seller is held not to change its written terms so as to make the contract binding on the purchaser before it has been signed by one or more of the officers of the seller.

#### Carriers.

The right of a sleeping car company to refuse to admit to its car a person having a contagious disease, although he has purchased a ticket for passage thereon, is sustained in *Pullman Co. v. Krauss* (Ala.), 4 L. R. A. (N. S.), 103.

A street railway company is held, in *Omaha Street R. Co. v. Boesen* (Neb.), 4 L. R. A. (N. S.), 122, not to be an insurer of its passengers, nor

to be bound to do everything that can be done to insure their safety, but to fulfil its obligations in that regard when it exercises the utmost skill, diligence, and foresight consistent with the practical conduct of the business in which it is engaged.

Where a passenger was injured by the starting of the train while he was alighting therefrom, the fact that the train stopped the usual and ordinary time at the station is held in *Chicago, R. I. & P. R. Co. v. Wimmer* (Kan.), 4 L. R. A. (N. S.), 140, not to be conclusive that a sufficient length of time was given the passengers to alight; and whether the stop was reasonably sufficient under the circumstances is held to be a question for the jury.

From the time a passenger places himself under the charge of the carrier as he begins his journey until he is afforded the opportunity to leave the premises of the carrier at its termination, he is held, in *Fremont, E. & M. V. R. Co. v. Hagblad* (Neb.), 4 L. R. A. (N. S.), 254, to be a "passenger being transported," within the meaning of a statute relating to injuries to persons while being transported on railroads, unless by some act not attributable to the carrier the relation ceases.

A street-car company which has so overcrowded a car that passengers are compelled to stand upon the steps and platform is held, in *Alton Light & T. Co. v. Oller* (Ill.), 4 L. R. A. (N. S.), 399, to be bound to regulate the speed of the car so as not to endanger persons so situated.

Starting a street-car before an incoming passenger has reached his seat is held, in *Bennett v. Louisville R. Co.* (Ky.), 4 L. R. A. (N. S.), 558, not to be negligence, where there is nothing in his appearance to indicate that he needs unusual care and precaution for his protection.

A carrier who fails to perform promptly his contract to transport the scenery and properties of a traveling show, knowing that their absence will prevent a performance, is held, in *Weston v. Boston & M. R. Co.* (Mass.), 4 L. R. A. (N. S.), 569, to be liable for the value of the ordinary earnings of the properties during the time the owner is deprived of their use, less the expense which he is saved by inability to exhibit; and the fact that such damages are not provided for in the shipping articles is held to be immaterial.

#### Building and Loan Associations.

The power of the board of managers of a building and loan association to transfer to another association the contract of a borrowing stockholder is denied in *Cobe v. Lovan* (Mo.), 4 L. R. A. (N. S.), 439.

In case of an advance by one loan association to take up a loan in another upon stock which has partly matured, it is held, in *Butson v. Home Sav. & Trust Co.* (Iowa), 4 L. R. A. (N. S.), 98, that the net amount of the loan is the sum still due, and not the face value of the loan, although the latter amount is charged on the books of the association, and a credit as of an advance payment thereon given for the withdrawal value of the stock in the other association.

## New Books.

**TREATISE ON THE LAW GOVERNING NUISANCES** with particular reference to its application to modern conditions and covering the entire law relating to Public and Private Nuisances, including Statutory and Municipal Powers, and Remedies, legal and equitable. By Joseph A. Joyce and Howard C. Joyce, Albany, N. Y. Matthew Bender & Co. 786 pp. and index.

The scope of this work is indicated in the title as above outlined, and an examination of its contents shows that the work has been carefully and thoroughly done. That there is a demand for such a treatise can hardly be questioned. The question of nuisances, always a much litigated and vexatious one, has grown in importance in recent years, in view of the tremendous growth of our nation in manufacturing industries and in population in the cities and towns, and the courts in numerous cases have been called upon to adjudicate the relative rights of the public and individuals.

The present volume fully treats of the rights of persons engaged in business or manufacturing enterprises, and the rights of legislative and municipal bodies to prevent and abate nuisances arising therefrom are discussed. Especial attention is given to the power of the legislature to legalize an act which might otherwise be a nuisance or to declare certain things to be nuisances. The authors have also treated more particularly those matters which are of importance under the modern law upon this subject, as, for example, the law of nuisances affecting highways and waters, both as to the rights of the public, the individual, and abutting and riparian waters. Smoke as a nuisance—a subject with which the courts of this District have had much to do in recent years—is fully considered in its various aspects. The questions of rights by prescription, the various alleged nuisances, such as nuisance smells, noises, jars, and vibrations, nuisances arising from animal enclosures, and other causes, of remedies in case of a nuisance, the right to summarily abate, and of damages, are thoroughly examined and discussed.

The value and practical utility of the work is enhanced by a complete index of 130 pages. The typography is all that could be desired, as indeed is the case with all works issued by the publishers.

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## RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

## Legal Notices.

## FIRST INSERTION.

**Geo. Francis Williams and Harry M. Packard,  
Attorneys**

**Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of **Lizzie L. Meade**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 29th day of October, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 17th day of December, 1906. **EDWARD W. JONES**, 217 Seaton Pl., N. E.; **BERTHA GRAY**, 928 1st st., N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,788. Administration. [Seal.] 51-St

**J. A. Lynham, Attorney**

**Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Richard D. Wimsatt**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 18th day of December, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of December, 1906. **J. ARTHUR LYNHAM**, Columbian Building. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,676. Administration. [Seal.] 51-St

**Oliver N. Metzgerott, Attorney**

**Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **John Walter, Jr.**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of November, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of December, 1906. **HENRY CASPER WALTER**, **FREDERICK L. WALTER**, 1127 18th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,046. Administration. [Seal.] 51-St

**Lambert & Baker, Attorneys**

**Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Michael O'Donnell**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of December, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of December, 1906. **MARGARET O'DONNELL**, 1229 N. J. ave. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,884. Administration. [Seal.] 51-St

Justice blanks of every description for sale at this office.

**Legal Notices.**

**R. Preston Shealy, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Henry B. Chapman, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the 14th day of December, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of December, 1906. CHARLES W. FLOECKHER, 146 R. st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,587. Administration. [Seal.] 51-3t

**Samuel Maddox, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Eliza J. Faherty, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the 20th day of December, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of December, 1906. MARY CATON, 732 Fifth st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,088. Administration. [Seal.] 51-3t

**Geo. E. Hamilton, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Josephine Merrick, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of December, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of December, 1906. MARY V. MERRICK, The Decatur. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,080. Administration. [Seal.] 51-3

**A. S. Worthington, J. J. Darlington, John B. Laner,**  
**W. G. Johnston, Solicitors.**

**In the Supreme Court of the District of Columbia.**  
**Washington Loan & Trust Co., Tr. & Ex., et al., v.**  
**Henry Rozler Dulaney, Tr., et al. No. 25,649. Equity**  
**Doc. —**

**CROSS BILL.**

The object of this cross bill is to declare lien in favor of the complainant and to set aside a certain deed of trust in favor of the Catholic University of America. On motion of the complainants, it is, this 19th day of December, 1906, ordered that the defendant, Henry P. Waggonman and Charlotte Waggonman, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided, a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day. ASHLEY M. GOULD, Justice. A true copy. [Seal]

Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 51-3t

**Roger W. Watts, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Samuel R. Watts, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscriber, on or before the 17th day of December, 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of December, 1906. RICHARD R. WATTS, 604 F. st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,082. Administration. [Seal.] 51-3t

**Legal Notices.**

**Brandenburg & Brandenburg, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscribers, who were by the Supreme Court of the District of Columbia granted letters testamentary on the estate of William H. Shock, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Friday, the 25th day of January, 1907, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 17th day of December, 1906. JAMES A. ROBINS, JAMES C. HISS, ALFRED GEORGE, by F. Walter Brandenburg, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,396. Administration. [Seal.] 51-3t

**Frank S. Bright and Cazenove G. Lee, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of John Collins, Deceased.**

**No. 14,064. Administration Docket—**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by C. G. Lee and F. S. Bright, it is ordered, this 18th day of December, A. D. 1906, that Thomas Collins, Clara Collins, Ellen Lucy Collins and Blanche Collins, and all others concerned, appear in said court on Monday, the 21st day of January, A. D. 1907, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said [Seal] return day. ASHLEY M. GOULD, Justice.

Attest: James Tanner Register of Wills for the District of Columbia, Clerk of the Probate Court. 51-3t

[Filed December 17, 1906. J. R. Young, Clerk.]

**G. Percy McGlue and Jno. J. Hamilton, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Mary Dunn v. Unknown Heirs, Alienees, and Devisees**  
**of James H. Hooe and Joseph Riddle.**

**No. 26,701, Equity Doc.**

The object of this suit is to obtain a decree quieting the title in complainant, by adverse possession, to the east fifteen feet of original lot numbered eleven (11), by the full depth thereof, in square numbered five hundred and seventeen (517), in the city of Washington, D. C. On motion of the complainant it is, this 17th day of December, 1906, ordered that the defendants, the unknown heirs, alienees, and devisees of James H. Hooe and Joseph Riddle cause their appearance to be entered herein on or before the 8th day of January, 1907; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 51-3t

**Edwin C. Dutton, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of John Frehner, Deceased. No. 13,985. Administration Docket 35.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate by Carl Frehner, it is ordered this 19th day of December, A. D. 1906, that Caroline Frehner, and Mrs. William Hertzog (nee Caroline Frehner), and all others concerned, appear in said court on Wednesday, the 23d day of January, A. D. 1907, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. [Seal.] 51-3t

**Legal Notices.****H. Prescott Gatlley, Solicitor**

**In the Supreme Court of the District of Columbia.**  
**Thomas H. Pickford et al. v. Thomas Diggins et al.**  
 No. 26,298, Equity.

Samuel Maddox and Leon Tobriner, two of the trustees appointed to make sale of the real estate involved in this proceeding, having reported the sale of sublots twenty-nine (29) and thirty (30) in square one hundred and ninety-eight (198) to Jeremiah Cullinane for the sum of forty-two hundred dollars (\$4,200.00), and part of lot sixteen (16) in square one hundred and ninety-eight (198) to Franklin Barrett for the sum of twenty-five hundred dollars (\$2,500.00), it is, this 18th day of December, A. D. 1906, upon consideration of the report of the said trustees, and the separate report of their co-trustee, Francis H. Stephens, ordered, that said sales be finally ratified and confirmed unless cause to the contrary be shown on or before the 19th day of January, A. D. 1907. Provided a copy of this order is published once a week for three successive weeks before said last mentioned date in The Washington Law Reporter and The Washington Post. By the Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by R. P. Belew, Asst. Clerk. 51-3t

**Ralston & Siddons, Attorneys**

**Supreme Court of the District of Columbia.**  
**Holding Probate Court.**

**Estate of William Scully, Deceased.**  
 No. 14,065. Administration Docket 86.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by E. Angela Scully, Frederick Trapp, and Frederick Scully, the surviving executors named in said will, it is ordered, this 18th day of December, A. D. 1906, that Mary Gertrude Scully, Julia Augler, and Kathleen Scully, and all others concerned, appear in said court on Tuesday, the 29th day of January, A. D. 1907, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 51-3t

**Irving Williamson, Attorney**

**Supreme Court of the District of Columbia.**  
**Holding Probate Court.**

This is to Give Notice That the subscriber who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of James Orr, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 21st day of January, 1907, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 20th day of December, 1906. CAMPBELL CARRINGTON, by Irving Williamson, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,312. Administration. [Seal.] 51-3t

**Irving Williamson, Attorney**

**Supreme Court of the District of Columbia.**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Charles H. Edelin, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 21st day of January, 1907, at 10 o'clock A. M., as the time, and said court room as the place for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 20th day of December, 1906. CAMPBELL CARRINGTON, by Irving Williamson, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,334. Administration. [Seal.] 51-3t

**Legal Notices.****Ralston & Siddons, Solicitors**

**In the Supreme Court of the District of Columbia.**  
**Mary Smith v. The Unknown Heirs, Devisees, and**  
**Allenees of Robert Peter and Elizabeth Dunlop,**  
**Deceased, et al. No. 26,616. Equity Docket 69.**

**ORDER OF PUBLICATION.**

The object of this suit is to establish of record as complete and perfect, the title of the complainant to all of original lot 3, in square 1, in the city of Washington, District of Columbia, and to restrain and enjoin the defendants herein from setting up any title thereto as against the complainant. On motion of the complainant, it is this 18th day of December, A. D. 1906, ordered, that the defendants, the unknown heirs, devisees, and allenees of Robert Peter and Elizabeth Dunlop, deceased, cause their appearance to be entered herein on or before the first rule day occurring after one month from the date hereof; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published, at least, twice during said month in The Washington Law Reporter and The Washington Times. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 51-3t

**Ralston & Siddons, Attorneys**

**In the Supreme Court of the District of Columbia.**  
**Mary Smith v. George Peter et al. No. 26,616. Equity**  
**Docket 69.**

**ORDER OF PUBLICATION.**

The object of this suit is to establish of record as complete and perfect, the title of the complainant to all of original lot 3 in square 1, in the City of Washington, District of Columbia, and to restrain and enjoin the defendants herein from setting up any title thereto as against the complainant. On motion of the complainant, it is this 18th day of December, A. D. 1906, ordered that the defendants, Jane Bell, J. Bradshaw Beverly, E. Lawrence Beverly, Francis W. Beverly, Hill Beverly, J. Bradshaw Beverly, Robert Beverly, William Beverly, Jane Carter, Arthur M. Chichester, Beverly Chichester, George M. Chichester, Montgomery D. Corse, Virginia B. Corse, William B. Corse, Walter D. Cox, Catherine Crampton, Marian Cutting, George Dunlop, John T. Dunlop, Martha C. Gibbs, Gertrude Hunt, Mary C. Jenkins, Mary R. Legare, Gabriella Macknubin, Evelyn McEnery, Virginia B. McGill, Jane McMurray, Eliza Marshall, — Mason, Kate Moorhead, Beverly Moseley, John W. Moseley, Pratt Moseley, Elizabeth B. Murdaugh, Kate Offutt, Sarah C. Page, Kate Parker, Nordest Patton, B. Kennon Peter, Daniel F. Peter, David Peter, Edith Peter, Edward C. Peter, Elizabeth Peter, Elizabeth Peter, George Peter, Henderson Peter, James Peter, John Peter, John P. C. Peter, John P. C. Peter, Jr., Margaret Peter, Mary Peter, Robert B. Peter, Thomas Peter, William B. Peter, Edward Slaymaker, Sarah Slaymaker, Elizabeth Thomas, Minnie D. Thomas, Nellie Thomas, T. Charles Thomas, Virginia L. Thomas, William E. Thomas, Mary Turner, N. L. Turner, Robert F. Turner, Custle P. Upshur, George Upshur, and Nannie Williams, cause their appearance to be entered herein on or before the fortieth day exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 51-3t

**SECOND INSERTION.****F. R. Keys, Solicitor**

**In the Supreme Court of the District of Columbia.**  
**Holding an Equity Court.**

**Annie R. Snyder, Complainant, vs. John D. P. Snyder,**  
**Defendant, and Marguerite A. Tefke, Corespondent.** Equity. No. 26,105.

The object of this suit is to obtain an absolute divorce. On motion of the complainant, it is, this 23d day of November, 1906, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided, a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Times. [Seal] By the Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 50-3t



**Legal Notices.**

**Oliver S. Metzgerott, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Catherine B. Schafer, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of December, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of December, 1906. **HENRY CASPER WALTER**, 1127 18th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,083. Administration. [Seal.] 50-8t

**Wm. H. Linkins, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Alice A. Linkins, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of December, 1906. **D. HOWARD LINKINS**, 800 19th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,794. Administration. [Seal.] 50-8t

**Gordon & Gordon, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Samuel Cross, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 7th day of December, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of December, 1906. **J. HOLDSWORTH GORDON**, 330 4½ st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,066. Administration. [Seal.] 50-8t

**Hayden Johnson, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Harriet V. Gobrecht, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of December, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of December, 1906. **EVELYN C. WIDNEY**, 1808 13th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,764. Admn. [Seal.] 50-8t

**In the Supreme Court of the District of Columbia.**  
**Howard Broadus v. Georgiana Broadus, Alphonzo Waters.** No. 28,682. Equity Doc. 59.

The object of this suit is to obtain an absolute divorce from the defendant, Georgiana Broadus, because of her adultery with the defendant, Alphonzo Waters. On motion of the complainant, it is, this 7th day of December, 1906, ordered that the defendant, Alphonzo Waters, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks [Seal] In The Washington Law Reporter and The Bee before said day. **HARRY M. CLABAUGH**, Chief Justice. A true copy. Test: **J. R. Young**, Clerk, by **Wm. F. Lemon**, Asst. Clerk. 50-8t

**Legal Notices.**

**George E. Flemming, Attorney**  
**Supreme Court of the District of Columbia.**  
**Holding Probate Court.**

**This is to Give Notice** that the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Lafayette C. Loomis, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 31st day of December, 1906, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 13th day of December, 1906. **UNION TRUST COMPANY**, by **George E. Flemming, Attorney**. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,336. Admn. [Seal.] 50-8t

**Nelson Wilson, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Robert J. McClellan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of December, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of December, 1906. **EDWARD O. REED**, 1216 S street northwest. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,073. Admn. [Seal.] 50-8t

**R. F. Downing and G. A. Berry, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Jeremiah K. Lynch et al. v. Michael K. Lynch et al.**  
 Equity, No. 25,938.

The object of this suit is to construe the language of the last will and testament of Jeremiah Lynch, deceased, to determine whether or not by the terms thereof a fee simple title to the real estate therein described is now in the heirs of Honora Lynch, deceased, wife of said Jeremiah Lynch. On motion of the plaintiff, it is, this 12th day of December A. D. 1906, ordered that the defendants, Julia Lynch, Mary Lynch, Margaret Lynch, Ellen Lynch, James Lynch, Julia Lynch, Daniel Lynch, Michael Lynch and wife Kate Lynch, John Lynch and wife Johanna Deneen Lynch, James Lynch, Honoria Lynch, Johanna Lynch, Bridget Lynch, Mary Lynch Dineen and husband Patrick Dineen, Frank Neilligan and wife Annie Neilligan, Edward Barry, Frederick Barry, Mary Barry, Emmet Barry, Thomas Barry, Mary Barry Kingsley and husband John J. Kingsley, Kate Kennelly, Thomas Cox and wife Emma Cox, Robert Cox, William Cox and wife Josephine Cox, and James Cox, cause there appearances to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. This notice is to be published in The Washington Law Reporter and The Washington Herald once a [Seal] week for three successive weeks before the return hereof. **HARRY M. CLABAUGH**, Chief Justice. A true copy. Test: **J. R. Young**, Clerk, by **F. E. Cunningham**, Asst. Clerk. 50-3t

**F. H. Stephens, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Frank Kolp, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of December, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of December, 1906. **THERESA WASHMITH**, 1924 Lemon st. Balto., Md. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,084. Admn. [Seal.] 50-8t

**Legal Notices.****H. W. Sohn, Solicitor**

**In the Supreme Court of the District of Columbia.**  
**The Farmers' and Mechanics' National Bank of Georgetown, Complainant, v. Arthur Small, Admr., et al., Defendants.** Equity, No. 28,624. Doc. No. 59.

The object of this suit is to sell the real estate of which Anthony Hanlon died seized, and described in the bill of complaint in this cause to pay the debt due by him to the complainant and other debts of said Anthony Hanlon; it appearing that the summons to Anthony Hanlon, Jr., Anthony J. Hanlon, Infant, and Mary T. Hanlon, Infant, has been duly returned "not to be found," it is, on this 14th day of December, 1906, on motion of H. W. Sohn, solicitor for the complainant, ordered that said Anthony Hanlon, Jr., Anthony J. Hanlon, and Mary T. Hanlon cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in cases of default. Provided a copy of this order is published once a week for three successive weeks in The Washington Law Reporter

[Seal] and The Washington Herald before said day. **HARRY M. CLABAUGH, Chief Justice.** A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 50-8t

**Wolf & Rosenberg, Solicitors**

**In the Supreme Court of the District of Columbia.**  
**Margaret Loeffler, Complainant, v. John Loeffler, Defendant, and a Woman by the Name of Jarbo or Wicks, the Surname being Unknown, Correspondent.** Equity, No. 28,657.

The object of this suit is to obtain an absolute divorce from the defendant, John Loeffler, because of his adultery with the correspondent, a woman by the name of Jarbo or Wicks, the Christian name and surname being unknown. On motion of the complainant, it is, this 7th day of December, A. D. 1906, ordered that the correspondent, a woman by the name of Jarbo or Wicks, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order shall be published once a week for three successive weeks in The

[Seal] Washington Law Reporter and The Washington Herald before said day. **ASHLEY M. GOULD, Justice.** A true copy. Test: J. R. Young, Clerk, by R. P. Belew, Asst. Clerk. 50-8t

**David Rothschild, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Bernard Mynes, Deceased.**  
**No. 14,052. Administration Docket—**

Application having been made herein for letters of administration on said estate, by Margaret M. Weiss, sister of the deceased, it is ordered, this 10th day of December, A. D. 1906, that Mary McNally, James Mynes, Thomas Mynes, Patrick Mynes, and all others concerned, appear in said court on Monday, the 14th day of January, A. D. 1907, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 50-8t

[Seal] [Filed December 12, 1906. J. R. Young, Clerk.]

**I. Williamson and Jas. F. Bundy, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Addie Dalley et al. v. Arabella Stark et al.**  
**No. 28,619. Equity Doc. 59.**

The object of this suit is to sell, to make partition, lot 9 in square 100, Washington, D. C., of which Peter Hedge-man died seized. On motion of the complainants, it is, this 12th day of December, 1906, ordered that the defendants, Arabella Stark, Clyde W. Stark, Nona Trent, Abbie Kelly, David Reid, Charlie Reid, Daniel Reid, James Carter, and Felix Robinson, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Wash-

[Seal] ington Law Reporter and The Washington Herald before said day. **HARRY M. CLABAUGH, Chief Justice.** J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 50-8t

**Legal Notices.****W. B. Reilly, Solicitor**

**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**

**Carrie A. Hobson, Complainant, v. Joseph H. Hobson and Della Young, Defendants.**

**Equity, No. 28,647.**

The object of this suit is to obtain a divorce a vinculo matrimonii on the grounds of the adultery on the part of the defendant, Joseph H. Hobson, with the defendant and correspondent, Della Young. On motion of the complainant it is, this 7th day of December, A. D. 1906, ordered that the defendants, Joseph H. Hobson and Della Young, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three consecutive weeks in

The Washington Law Reporter and The Washington Herald. **HARRY M. CLABAUGH, Chief Justice.** A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 50-8t

**Robert S. Hume, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Walton Goodwin, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of July, A. D. 1907; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of August, 1906. **BETTY WALKER GOODWIN, 1516 P St. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 13,828. Administration. [Seal.] 50-8t

**FOURTH INSERTION.**

[Filed November 14th, 1906. J. R. Young, Clerk.]

**McKenney, Flannery & Hitz, Solicitors**

**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**

**Annie B. Strickland, Complainant, v. J. Bryant Tucker, Jr., et al, Defendants.**

**In Equity, No. 28,621.**

**ORDER FOR APPEARANCE OF ABSENT DEFENDANTS.**

The object of this suit is to make partition by sale among the heirs at law of Clara B. Walker, deceased, of the land and premises known as lot numbered one hundred and thirty (130) in square numbered four hundred and forty-five (445) in the city of Washington, the same being improved by a brick dwelling-house numbered 804 Q street, northwest, in said city. On motion of the complainant it is, this 14th day of November, 1906, ordered that the defendants, J. Bryant Tucker, Junior, Arabella H. Tucker, Marina H. Hobbs, Nellie F. Munger, Marion C. Hunter, Norman F. Tucker, Sarah F. Pellett, Thomas A. Harwood, Mary A. Harwood, Sarah Harwood, Amos A. Bemis, Clara H. Bemis, Edith S. Leby, Walter Bingham, Annie M. Shaw, Eugenia Wedger, Bertha E. Bingham, John Harwood Hudson, Eva C. Alken, Lella A. Freer, W. G. DeA. Hudson, Charles Freeman Holman, Josephine A. Wale, Fanny R. Powers, William A. Burgess, Ella Rathburn, Thomas Arthur Hubbard, William P. McKown, Harry Harwood Haines, Charles M. Deland, Albert V. Deland, Evellina B. Deland, Charles Armit Deland, Carrie E. Tarbell, Etta E. Gay, Joseph H. Craig, Eleanor C. Drake, Norman S. Craig, Grace C. Stork, Annie S. Chapman, Grace Smith Gillis, William Dudley Smith, Catherine S. Smith, and Frederick Bingham, or the unknown heirs, devisees and allenees of said Frederick Bingham; and Thomas H. Bingham, or the unknown heirs, devisees, and allenees of said Thomas H. Bingham; and Edward Bingham, or the unknown heirs, devisees, and allenees of said Edward Bingham, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three (3) months from this date, otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three months in The Washington Law Reporter and

The Washington Herald before said day. [Seal] **HARRY M. CLABAUGH, Chief Justice.** A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. nov 28 80, dec 21 23, jan 18 25

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